KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

FACSIMILE

(202) 955-9792

www.kelleydrye.com

DIRECT LINE: (202) 887-1284

EMAIL: hhendrickson@kelleydrye.com

NEW YORK, NY

TYSONS CORNER, VA

LOS ANGELES, CA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

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MUMBAI, INDIA

TOKYO, JAPAN

January 8, 2003

VIA ELECTRONIC SUBMISSION

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Meeting by Core Communications, Inc.
WC Docket No. 02-384

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, I hereby submit, on behalf of Core Communications, Inc., ("Core"), in the above-captioned proceeding, this notice of an *ex parte* meeting held on January 8, 2003 between Chris Van de Verge, General Counsel of Core; Michael Hazzard of Kelley Drye & Warren; myself, and Gail Cohen, Greg Cooke, Marcy Greene, Jon Minkoff, Cecilia Seppings and Craig Stroup of the Wireline Competition Bureau. The attached presentation and supporting materials were distributed and discussed at the meeting.

In accordance with the Commission's rules, this letter and attachments are being filed electronically for inclusion in the public record in the above-referenced proceeding. Copies of this submission are being provided to the attendees from the Wireline Competition Bureau. If you have any questions regarding this matter, please contact myself at (202) 887-1284 or Michael Hazzard at (202) 887-1240.

Respectfully Submitted,

Heather Hendrickson

Heather T. Hendrickson

cc: Gail Cohen, WCB/CPD
Greg Cooke, WCB/CPD
Marcy Green, WCB/CPD
Jon Minkoff, WCB/CPD
Cecilia Seppings. WCB/CPD
Craig Stroup, WCB/IATD

CORETEL
CORE COMMUNICATIONS

Verizon Section 271 Proceeding
WC 02-384

January 8, 2003

Agenda

- Background
- CoreTel's Success-Based Business Plan
- Checklist Item 1 – Interconnection
- Checklist Items 2 , 4, & 5– UNEs (Dark Fiber)
- Public Interest

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Background

- Annapolis-based carrier founded in 1997
- Facilities-based
- Became profitable in 2000
- Reinvesting profits in company
- Focused on developing telecom infrastructure used by regional Internet Service Providers
- Primary service in Maryland, Pennsylvania, and Delaware (Maryland Eastern Shore)

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Success-Based Business Plan

- CoreTel is a real, traditional startup
- Pay as you grow – build out network incrementally
  - Baltimore (1999)
  - Mt. Airy, Easton, Damascus (1999-2000)
  - New York City, Philadelphia, Pittsburgh (2001)
  - Harrisburg (2002)
  - Altoona, Salisbury, Wilkes-Barre (2003)
- CoreTel presently accounts for over 15% of Verizon's interconnection traffic in Maryland, and substantially all of Verizon's interconnection traffic on the Eastern Shore of Maryland

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Success-Based Business Plan

- Focus on what you know -- Telco needs of regional ISPs
  - Modem services (1999)
  - Bandwidth services (2000)
  - 100 Megabit Ethernet services (2001)
  - Beta electronic fax service (2002)
- As technology matures, add services
  - Unified messaging (facilities under construction)
  - IP-based voice services (facilities under construction)

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Checklist Item 1 -- Interconnection

- Verizon's entrance facility interconnection practices and policies violate checklist item (i)
- Verizon has refused in every instance to interconnect with Core over existing facilities in violation of section 251(c)(2)'s:
  - technical feasibility standard
  - equal in quality standard
  - nondiscrimination standard

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Checklist Item 1 -- Interconnection

- Verizon's refusal to utilize existing facilities for interconnection has delayed Core's interconnection in
  - Baltimore (1999)
  - Mount Airy (1999-2000)
  - Damascus (2000-2001)
  - Salisbury (2002)
- In spite of Verizon's commitment to MDPSC to interconnect with Core in Salisbury, nothing has happened to date

Checklist Item 1 -- Interconnection

- Verizon similarly refuses to make technically feasible modifications to its network to accommodate interconnection
- Caused Core's Damascus interconnection project to take over 270 days

Checklist Item 1 -- Interconnection

- Verizon refuses to pass ANI (automatic number identifier) to Core over interconnection trunks, even though it is technically feasible to do so
- ANI is critical call routing information, and the lack thereof materially handicaps Core's ability to deploy new services

Checklist Item 1 -- Interconnection

- Enforcement efforts
  - FCC 208 complaint (oldest pending complaint in Enforcement Bureau)
  - MDPSC complaint, hearing concluded, briefing next

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Checklist Items 2, 4, & 5

- Dark Fiber loops and transport
- Pending arbitration at MDPSC, but have executed an amendment
- Core has 23 Dark Fiber inquiries pending
- Information access is key, but in spite of assurances to MDPSC, Verizon will not provide additional information

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Checklist Items 2 , 4, & 5

- Verizon today informed CoreTel for first time that it would not provision a dark fiber transport circuit across LATA boundaries, even though
  - No such restriction exists in interconnection agreement amendment
  - No such restriction exists in FCC rules
- Verizon is relying on its "Handbook"

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Public Interest

- The local market in Maryland is not irreversibly open to competition
- ISP service is the ONLY success point of entry in Maryland
- CLECs terminate over 37x the traffic they originate in Maryland
- Verizon has paid short shrift to its commitments to the MDPSC

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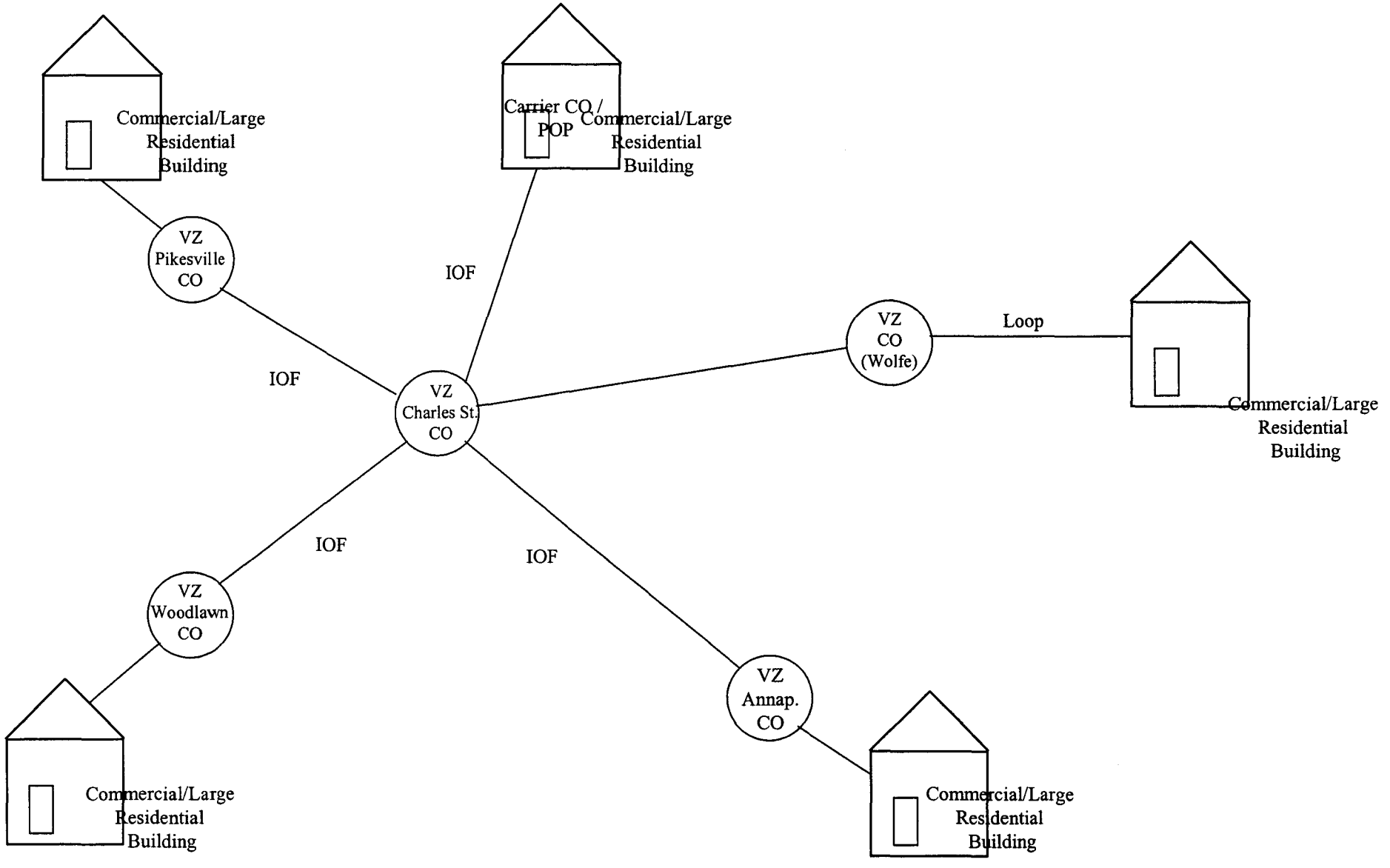
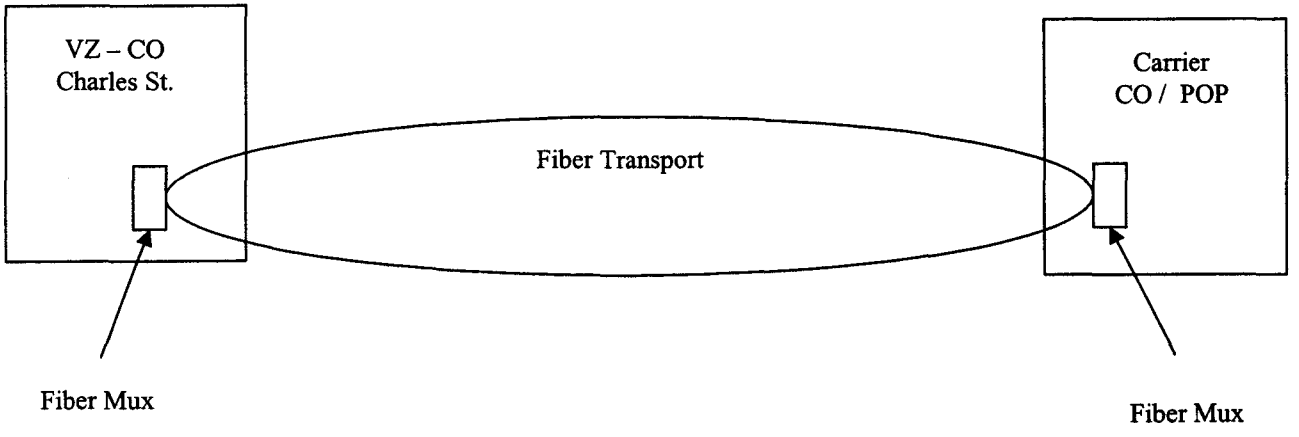
VZ Exhibit 8

IOF vs. Loop



IOF


VZ – CO
Charles St.
Fiber Transport
Carrier
CO / POP
Fiber Mux
Fiber Mux

Loop

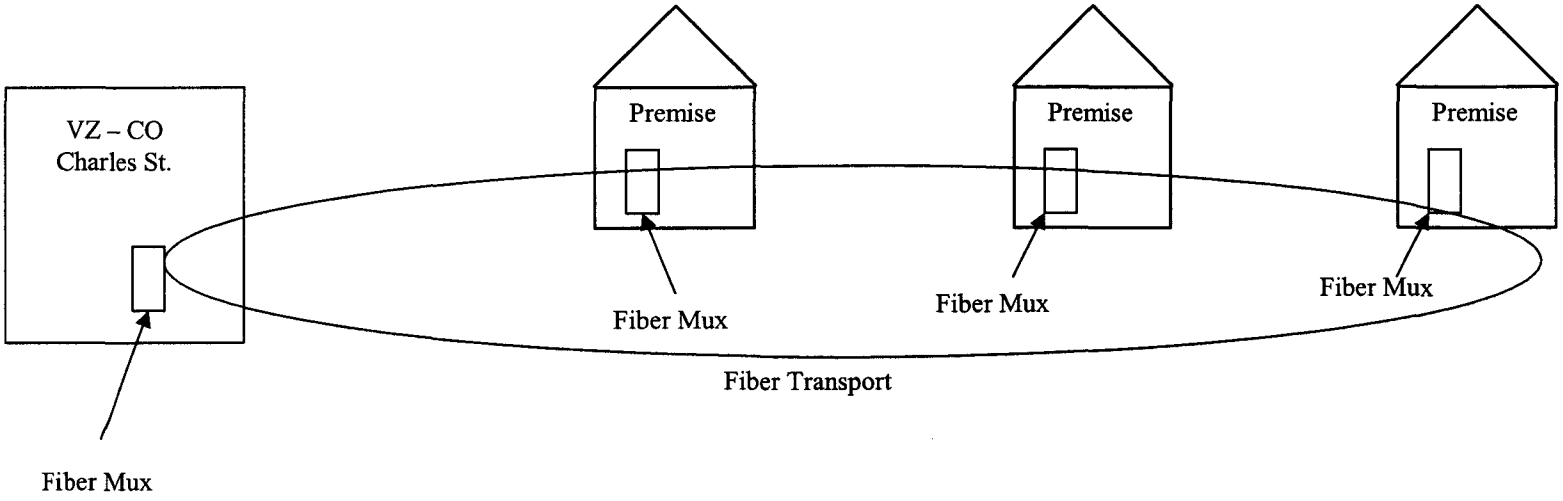
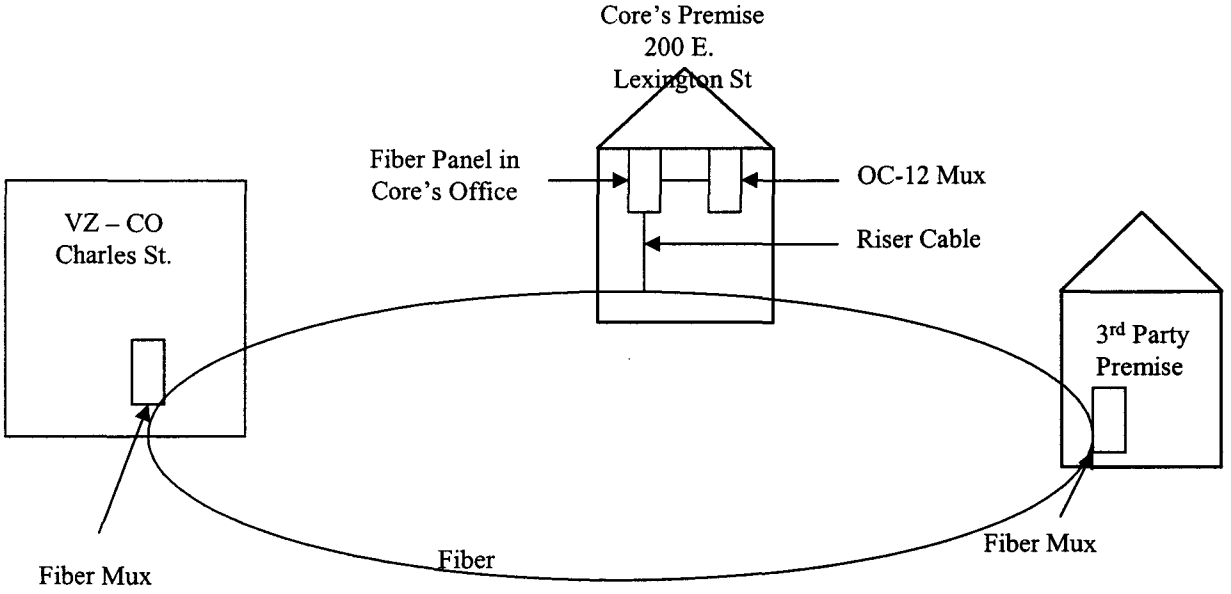

VZ – CO
Charles St.
Premise
Premise
Premise
Fiber Mux
Fiber Mux
Fiber Mux
Fiber Transport
Fiber Mux

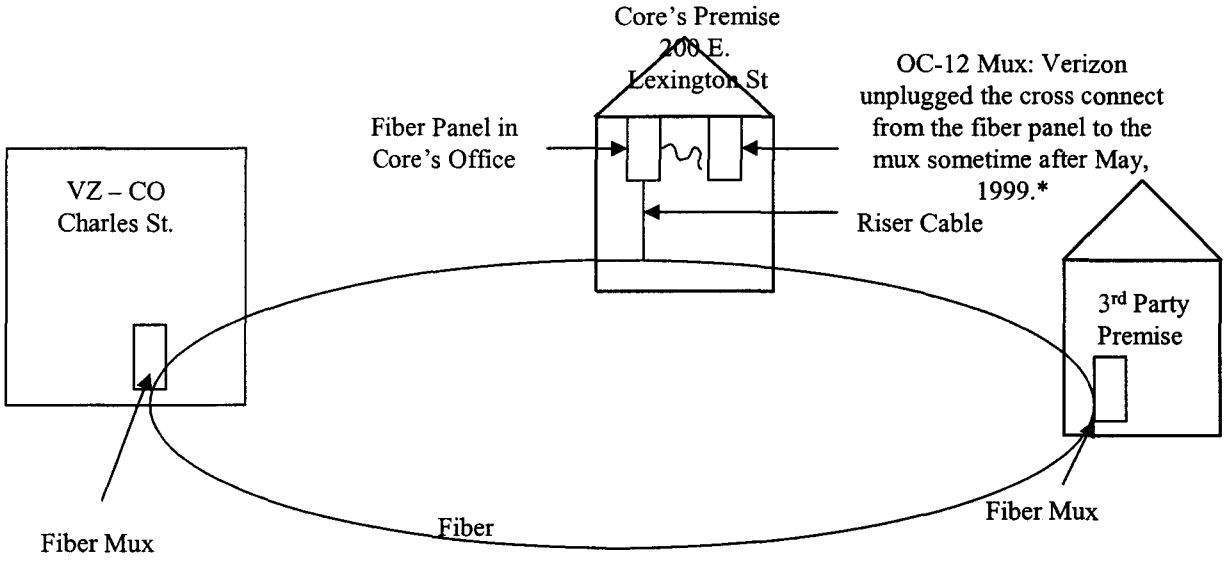
Exhibit 10A

Loop
(OC-12 Ring – As built by Verizon in May 1999)



OC-12 Loop Ring

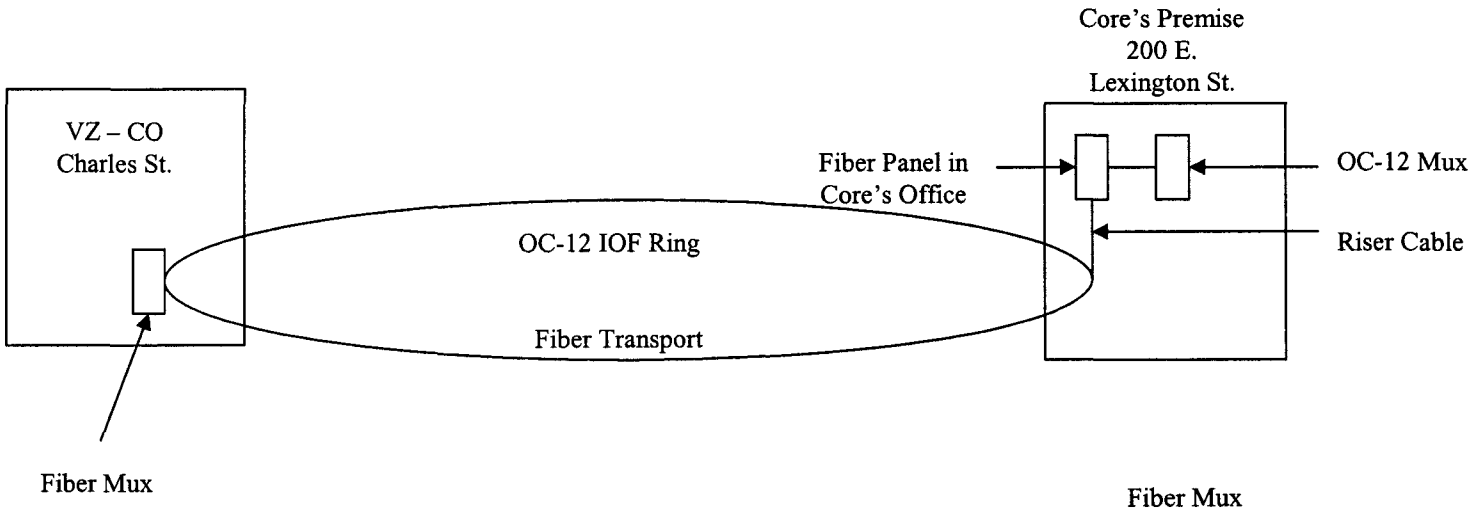
Loop
(OC-12 Ring – Post-Disconnect)



OC-12 Loop Ring

* According to Verizon witness Albert, the mux was unplugged prior to the August 11, 1999 interconnection implementation meeting. According to Core witness Mingo, the mux was unplugged after the August 11 meeting.

IOF
(Final Configuration with Core – Nov. 1999)



December 16, 2002

Mr. William R. Roberts
President
Verizon Maryland Inc.
Floor 8-E
1 East Pratt Street
Baltimore, Maryland 21202

Re: In the Matter of the Review By the Commission Into Verizon Maryland Inc.'s Compliance with the Conditions of 47 U.S.C. §271(c), Case No. 8921

Dear Mr. Roberts:

On April 12, 2002, Verizon Maryland Inc. ("Verizon") filed its request in Maryland for the Maryland Public Service Commission ("Commission") to consider the facts regarding Verizon's decision to enter the long distance market via a §271 application at the Federal Communications Commission ("FCC"). This request followed two years of testing of Verizon's wholesale operations support systems ("OSS") in Virginia and related corrective actions to those systems. The April 12th filing also reflected the fact that Verizon had requested the Maryland Public Service Commission to refrain from implementing Maryland specific OSS testing and await the outcome of the Virginia test results.[1]

The Maryland Commission's agreement with the above request ensured that any §271 consideration here would of necessity follow Virginia's consideration as our anchor state, Verizon Virginia's application to the FCC and FCC approval. Thus, this process ensured, as well, that Maryland would be one of the last Verizon states to consider a §271 application. The FCC has permitted applicants for §271 authority to rely upon OSS evidence from another state, referred to as the anchor state, provided the FCC has already approved the anchor state's §271 Application, or is given the opportunity to review the anchor state's OSS simultaneously, such as in a multi-state filing.

During the past several months, the Maryland Commission has conducted a detailed examination to determine the status of Verizon's compliance with §271(c) of the

[1] Maryland agreed to do so based upon Verizon's assertion that the Maryland and Virginia wholesale OSS are comparable, and in so doing would avoid duplicative testing and unnecessary cost to Verizon. Other parties disagreed with this position.

Telecommunications Act of 1996 ("1996 Act"). 47 U.S.C. §271(c). In the course of this examination, the Commission received into evidence thousands of pages of documents regarding checklist compliance, testing, validation, the Virginia consultative report, transcripts from the Virginia proceeding and other issues, as well as testimony and briefs from the parties, including several competitive local exchange carriers ("CLECs") and the Office of People's Counsel. The Commission conducted five days of evidentiary hearings from October 28 through November 1, 2002. In addition, on November 4, 2002 the Commission heard live surrebuttal regarding the FCC's October 30, 2002 approval of the Verizon Virginia §271 application. Since Virginia was the anchor state for OSS testing for Maryland, the Maryland Commission was unable to act prior to such approval being received. Now with the FCC approval of Virginia's OSS having been granted, the hearings in this proceeding concluded, over 200 pages of post-hearing briefs received and a transcript in excess of 1700 pages reviewed, this Commission can now complete its expeditious review of this matter.

This Commission has a long history of fostering competition in the local market. At one time, Maryland was considered a national leader in the opening of telecommunications' markets to competition. Today, this Commission is greatly concerned about the State of Maryland's inability to build upon the initial gains achieved in opening the local market to competition and the apparent sluggish nature of local competition growth.

Maryland began opening the local telephone service market to competition in 1994. In *Re MFS Intelenet of Maryland, Inc.,* 85 Md. PSC 38 (April 25, 1994), this Commission granted MFS authority to provide telephone services in Maryland, approved the unbundling of links and ports and required Verizon (then Bell Atlantic-Maryland, Inc.) to provide for interconnection with MFS. In Phase II of that proceeding, the Commission set the rates, terms and conditions for interconnection between the carriers. *Re MFS Intelenet of Maryland, Inc. Phase II,* 86 Md. PSC 467 (Dec. 28, 1995).

The passage of the 1996 Act interrupted Maryland's course of action as it imposed new duties and new processes on state agencies with regulatory responsibilities over telecommunications carriers. Enactment of the 1996 Act required the Commission to reexamine previously resolved issues to ensure compliance with new FCC directives. Further, the new process removed this Commission's autonomy and forced the Commission to constantly revise its vision of how competition can and should be achieved in Maryland to reflect federal regulatory and judicial decisions.

The State of Maryland is no longer a national leader in telecommunications competition. To the contrary, according to the FCC Report on the status of local competition in the nation referenced in the record of this proceeding, CLECs in Maryland serve 4% of the end-user switched access lines, while the national figure is 10%.[2] Indeed, as of December 2001, the level of competition in Maryland had receded by a third from 6% to 4% and appeared to be regressing, joining South Carolina and Mississippi. Such a condition is not

[2] On December 9, 2002, following the conclusion of the hearings in this proceeding, the FCC issued an updated report on the status of local competition which updated the number of end-user switched access lines served by CLECs in Maryland to 6% and 11% nationally as of June 2002.

acceptable in Maryland after 8 years of effort. This situation no doubt results from federal actions but also from various Verizon operational issues, CLEC issues – financial and otherwise, and this Commission's delay in resolving our recent proceeding into the rates Verizon charges for wholesale unbundled network elements in Maryland.

Thus, Commission's consideration of the record developed in this proceeding shows the obvious need to improve the local competitive environment in Maryland. In order to ensure that local competition is sustainable into the future, the Commission directs Verizon to implement the requirements discussed below. The Commission finds that subject to Verizon complying with the conditions identified below, Verizon is technically in compliance with the §271 checklist as defined by the FCC. Furthermore, the Commission notes a number of concerns that must be addressed before the Commission can say that Verizon's entry into the Maryland long distance market is in the public interest. The Commission hereby conditions its recommendation to the FCC that Verizon's entry into the long distance market is in the public interest on Verizon addressing the concerns listed below in the manner ordered by the Commission.

1. Verizon's No Build Policy

This issue involves Verizon's provisioning of high capacity unbundled local loops. Several parties to this proceeding argued that Verizon improperly rejects CLEC orders for high capacity loops[3] when Verizon claims no facilities are available and construction is required, (hereinafter referred to as Verizon's "no build" policy). Based on the evidence in this case, the Commission believes that the impact of Verizon's "no build" policy pertaining to the availability of DS-1 and DS-3 facilities for use by CLECs creates a barrier to local competition in Maryland.

Verizon contends that its policy is based on a decision of the United States Court of Appeals for the Eighth Circuit holding that unbundling only applies to the incumbent local exchange carrier's ("ILEC") existing network. Verizon also notes that the FCC is considering whether to modify these rules. Finally, Verizon claims that CLECs can cause Verizon to build new facilities if CLECs order them as special access facilities and pay the minimum term of two months' worth of charges for special access DS-1s and one year's worth of charges for DS-3s before converting them to UNEs. The CLECs contend that Verizon's policy results in new facilities costing CLECs more than if these facilities were provisioned at UNE rates.

The Commission does not dispute the effect of the Eighth Circuit decision, and the Commission is cognizant of the fact that the FCC has previously found that similar Verizon policies in other states do not violate the competitive checklist. In this proceeding, however, the evidence supports the claim that Verizon's policy has the effect of increasing CLEC costs and provisioning intervals which delay the CLECs provision of service to the end user, and as such creates a barrier to competition. The record suggests that a number of CLECs are

[3] E.g., DS-1 and DS-3 loops or other high capacity facilities, including interoffice facilities or entrance facilities.

unaware that the special access facilities which are ordered because of the lack of available facilities may be converted to UNEs after two months for DS-1s and one year for DS-3s. This conversion policy enables the CLECs to have access to the high capacity facility without the excessive cost of maintaining the facility at the higher special access rates indefinitely.

Therefore, as a temporary measure, the Commission finds that if a CLEC orders a DS-1 as a UNE with a request for automatic conversion, and Verizon does not provision it because of lack of facilities, Verizon shall convert the UNE order to a special access order and then convert the newly-built special access facility to a UNE automatically after the tariffed time has elapsed. This automatic conversion will only occur in those situations where the CLEC originally requested UNE facilities, and this request was denied by Verizon. Moreover, the FCC rules and limitations on converting special access to UNEs shall be followed for each conversion. Verizon shall put this revised ordering arrangement in place within four months.

The Commission's concerns pertaining to the effect of Verizon's "no build" policy on competition have been echoed in other Verizon jurisdictions, including Virginia. There, the Virginia State Corporation Commission ("VSCC") has instituted a proceeding to consider this issue, and the practice is also under consideration in the FCC's Triennial Review. This Commission will actively monitor both proceedings and upon their conclusion take further action as may be necessary.

Finally, the Commission is concerned about the limited amount of information Verizon provides a CLEC when no facilities are available. Verizon is directed to identify to the CLEC the reason for each no facilities finding.

2. Dark Fiber

Dark fiber, analogous to unused copper loop or transport facilities, is fiber that is in place but has not been activated through the connection of the electronics/photonics to carry communications services. Dark fiber is useful to local exchange carriers in a variety of ways including the provision of advanced services or services offered over high bandwidth. Dark fiber can also be cost effective and can result in economies of scale being achieved by CLECs. In accordance with the FCC's rules and regulations, ILECs must make dark fiber available to CLECs pursuant to section 251(c)(3) of the Act. The Commission believes that the record in this case suggests the lack of accessible information from Verizon to CLECs prevents CLECs from identifying and locating existing dark fiber within Verizon's Maryland network. Further, it appears that the CLEC's inability to reserve or order dark fiber while a request for collocation arrangement is pending creates an additional barrier to the development of local competition in Maryland.

According to Verizon, the FCC addressed the second issue noted above in its recent Virginia Consolidated Arbitration Order. As a result, Verizon is now required in Virginia to permit CLECs to order the desired dark fiber ten business days after the CLEC requests a collocation arrangement. The Commission hereby directs Verizon to implement this policy in

Maryland. Thus, CLECs will be permitted to order dark fiber and collocation arrangements in this manner. The Commission believes that this new requirement will advance the development of competition for advanced services in Maryland, such as high speed data access.

With regard to the issue of whether Verizon provides adequate information to CLECs so that they might locate dark fiber, Verizon contends that the Company has improved this process by providing alternative routing to a requesting CLEC. While this change is a step in the right direction, it represents only a minimal improvement at best. The Commission hereby directs Verizon to continue to provide this alternative routing. Furthermore, the Commission directs Verizon to provide to a CLEC upon request, central office and all related termination points for all fiber facilities for any office or group of offices at which the CLEC is considering ordering dark fiber. This will enable CLECs to have access to more accurate information pertaining to the availability of dark fiber on routes where fiber is actually installed and will operate to remove a barrier to competition by improving access to UNEs and the quality of information available to CLECs.

3. Geographically Relevant Interconnection Points ("GRIPS")

Verizon has entered as evidence in this proceeding a Model Interconnection Agreement containing terms which require CLECs to establish with Verizon one or more GRIPs or virtual geographically relevant interconnection points ("VGRIPs") at designated or agreed upon points within each Local Access and Transport Area ("LATA") of Verizon's network. This Commission previously considered this proposal in Case No. 8887, the Sprint Communications Co., L.P./Verizon Arbitration, wherein the Commission rejected Verizon's GRIP/VGRIP proposals. The proposed language in the Model Interconnection Agreement is substantially the same as the language proposed by Verizon during the Sprint Arbitration as well as the language rejected by the FCC in the Virginia Consolidated Arbitration. This Commission's position on this issue remains unchanged. The Commission does not accept Verizon's GRIPs or VGRIPs proposals.

According to Verizon, its Model Interconnection Agreement has been modified to reflect the results of the FCC's Virginia Consolidated Arbitration Order. However, the Model Interconnection Agreement, which was dated prior to the issuance of the Virginia Consolidated Arbitration Order, was submitted as evidence in this proceeding. It does not reflect that change. The Commission hereby directs that Verizon shall not include GRIPs or VGRIPs provisions in any Model Interconnection Agreement in use in Maryland unless expressly authorized by this Commission or the FCC.

4. Billing

The Virginia State Corporation Commission's testing of Verizon Virginia's OSS did not separately test the accuracy of the Billing Output Specification/Bill Data Tape ("BOS/BDT") electronic billing system used by Verizon to generate bills for some CLECs. The evidence in this proceeding demonstrates the importance of having a means of ensuring

that Verizon provides CLECs with timely and accurate paper and electronic bills. The Commission notes that the negative effects of incorrect billings falls more heavily on CLECs in a developing competitive market. The updated version of the Maryland Carrier-to-Carrier Guidelines, which enforces Verizon's performance, will become effective January 2003. They include metrics to measure important aspects of the billing process. These metrics require 95% of all billing claims to be acknowledged within two business days and also require that 95% of these billing claims be resolved within 28 days after acknowledgement.

This Commission has concerns that, under the stress of high commercial volumes electronic billing may experience unanticipated difficulties. Therefore, in order for this Commission to monitor whether Verizon's electronic billing is working successfully under commercial applications and volumes, the Commission directs Verizon to alter the report dimensions to include CLEC aggregate, CLEC specific, Verizon affiliate aggregate and Verizon affiliate specific information on the billing metrics. Furthermore, the Commission directs the Maryland Carrier-to-Carrier Collaborative ("Collaborative") to examine whether different metrics adopted in New Jersey or other jurisdictions are appropriate for use in Maryland.

5. Entrance Facilities

Verizon Maryland is required by the 1996 Act and the FCC to provide interconnection using all technically feasible means, including loop facilities. Verizon indicates that it will provide the types of interconnection such as that requested by Core Communications subject to appropriate amendments to the parties' interconnection agreement. According to Verizon, Core and some other CLECs are requesting a lesser form of interconnection which is not usually included in the interconnection agreements. The CLECs contend that this form of interconnection is necessary due to cost and provisioning time considerations. However, the Commission is pleased to note Verizon's willingness in Salisbury, Maryland to modify their previous policy by agreeing to interconnect with Core using its existing retail facilities in shared arrangement. This appears to remove a barrier to competition.

The FCC, in its interpretation of §251(c)(2), requires ILECs to provide interconnection that is "at least" equal in quality to that enjoyed by the ILEC itself. The FCC also requires ILECs to provide interconnection arrangements when the request is technically feasible, subject to the terms of the parties' interconnection agreements. The Commission finds that it is technically feasible in some instances for Verizon to provide entrance facility interconnection to requesting carriers over loop facilities that are shared with Verizon's retail customers, rather than over conventional interoffice facilities.

Furthermore, Verizon shall be required to provide entrance facilities to requesting CLECs over existing loop facilities that are shared with Verizon's retail customers when capacity exists. The fact that a CLEC has requested the shared facilities demonstrates that the CLEC is willing to accept a lesser quality form of interconnection, and the performance limitations that such lesser quality interconnection may entail. In order to accommodate CLECs seeking this form of interconnection, Verizon is directed to provide within thirty (30)

days of accepting the conditions in this letter, a Model Interconnection Agreement amendment that can be adopted by CLECs seeking this form of interconnection with Verizon. This amendment shall be filed with and must be approved by the Commission. In addition, the Collaborative shall consider the issue of what metrics and PAP will apply in this situation. The Commission intends to monitor Verizon's provision of these facilities while the Collaborative is considering this issue.

The Commission is aware that many issues pertaining to interconnection trunking over loop facilities are under consideration in a separate Commission proceeding, Case No. 8881. The Commission believes that this proceeding will resolve the majority of the issues pertaining to this aspect of entrance facilities, and determine if any barriers to competition exist.

6. Enhanced Extend Loops

An Enhanced Extended Loop ("EEL") consists of a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport. The record in this proceeding suggests that Verizon's requirement that CLECs order the component parts of EELs in a sequential, rather than a coordinated, manner requires CLECs to pay for facilities before they are assembled in useful form. Thus, the process by which Verizon requires CLECs to order EELs creates unwarranted delay and additional costs.

Evidence presented in this proceeding demonstrates that a different ordering process currently is being used in Massachusetts. The Commission hereby requires that Verizon adopt in Maryland the tariffed Massachusetts EEL ordering and billing process. In order to accommodate CLECs seeking EELs, Verizon is directed to provide to the Commission, within thirty (30) days of accepting the condition in this letter, a Model Interconnection Agreement amendment that can be adopted by any CLEC seeking this form of UNE. This amendment shall be filed with and must be approved by the Commission.

7. Line Sharing

Line sharing occurs when an incumbent is providing, and continues to provide, voice service on a particular loop to which a CLEC provides or seeks access in order to provide xDSL service. According to the evidence presented, where an end user formerly was provided voice and data services by Verizon and chooses to receive its voice services from a CLEC, the end user will lose its data or DSL services from Verizon. The Commission is extremely concerned about this potential side effect on a consumer's decision to engage in choice – that is that the customer has to weigh its desire to maintain its DSL service against its decision to select a competitive local exchange provider. The Commission is pleased that Verizon has indicated that it is willing to enter into technical and business discussions with CLECs to attempt to arrange the relationships necessary to make such a consumer decision unnecessary. Such an offer addresses the Commission's public interest concerns pertaining to this issue. The Commission directs that Verizon make the offer available to all CLECs.

8. Metrics Replication

The Commission recognizes the need to ensure that Verizon's performance in providing service to CLECs continues and improves after Verizon enters the long distance market in Maryland. For this reason, the Commission approved both the Carrier-to-Carrier Guidelines and the Performance Assurance Plan ("PAP"). The Commission relies upon Verizon to provide the metrics reports that measure Verizon's performance and trigger the payments applicable under the PAP.

In order to better ensure the accuracy of these reports, Verizon is directed to file exception reports refiling those metrics found to be in error. The metrics are to be corrected where the discovered error has an effect on the aggregate calculation of PAP remedies in excess of $1,000. This refiling shall occur in any instance where an error has been noted and corrected, regardless of what party discovers the error. After six months experience, the Commission will evaluate the need to continue this refiling requirement.

Furthermore, an ability to replicate the metrics reports provided by Verizon will allow the Commission to verify the accuracy of the metrics measuring Verizon's performance. The Commission shall require that Verizon, upon request of the Commission, hire a consultant who shall report directly to the Commission and shall train the Commission Staff on how to set up Maryland Performance Metrics replication. After the consultant is hired, Verizon shall provide Staff access to the Metrics Hotline to answer questions that may arise concerning the complementation of the Guidelines and shall cooperate with Staff to provide the data required to allow Staff to conduct replication as necessary to confirm the accuracy of Verizon's performance reports.

9. Directory Listing and Related Charges

The Virginia State Corporation Commission's OSS test did not include a meaningful examination of the accuracy of directory listings. The Commission is concerned that directory errors, both white and yellow pages, cause disruption to CLECs disproportionately. Thus, this Commission will be carefully monitoring directory listing errors, and will, if necessary, institute a special proceeding to address any concerns.

Further, testimony in this proceeding indicates that Verizon encourages CLECs to use the Directory Listing Inquiry pre-order query in order to ensure the accuracy of White Pages Listings. Verizon expressly stated that the Company currently does not charge for this inquiry. However, Verizon's Model Interconnection Agreement includes a charge for pre-order queries that includes the Directory Listing Inquiry. Since Verizon does not charge for this inquiry in Maryland, Verizon is hereby directed to amend its Model Interconnection Agreement used in Maryland within thirty (30) days of accepting the condition in this letter to indicate that no charges apply. Furthermore, Verizon is hereby prohibited from instituting such a charge unless the Company first obtains the approval of this Commission.

10. Unbundled Network Element ("UNE") Pricing

The record in this proceeding supports a finding that establishing an appropriate level of UNE rates, in particular UNE-P, is essential in encouraging competitive entry into the Maryland market. In Case No. 8879, the Commission currently is completing a comprehensive resetting of UNE rates. The Commission intends to complete that case and issue a final order soon.

The Commission concludes that permitting Verizon to continue charging the currently effective UNE rates will not adequately promote full-scale market entry in Maryland. The Commission is particularly concerned about the loop rate and the unbundled switching rate. Accordingly, Verizon is directed to reduce these rates in the manner described below.

With regard to the UNE loop rate, the Commission requires Verizon to agree to reduce this rate from the current statewide average of $14.50 to a statewide average of $12.00. Additionally, Verizon is required to reduce its end-office per minute-of-use switching element 56% from $0.003800 per minute to $0.001676 per minute. Finally, for the other rates previously instituted in Case No. 8731, Phase II, Verizon is directed to adopt an interim rate-setting approach similar to that the Company employed and the FCC approved in Verizon Virginia's § 271 filing. The Commission directs Verizon to file a list of these rates with the Commission at the same time that the Company accepts this condition.

Moreover, the Commission also requires that Verizon commit to make the rates adopted in Case No. 8879 retroactive to the effective date of the reduced rates discussed above. The effective date of these reduced rates shall be within five days of the date of this letter.

Finally, in the event that the Order issued in Case No. 8879 is subsequently overturned an appeal, Verizon shall commit to reinstituting the rates set forth above until such time as the Commission reconsiders the decision rendered in Case No. 8879 to the extent required by the Court.

11. Additional Policy Concerns

In addition to the conditions contained in numbered paragraphs 1 through 10 of this letter to which Verizon must respond, the Commission also has several policy concerns pertaining to competition within the State of Maryland.

A. Retention of the UNE-Platform

The Commission is extremely concerned that the FCC is considering modifications to the list of Unbundled Network Elements ("UNEs") and the availability of UNE-Platform ("UNE-P"). On November 20, 2002, this Commission, along 75 other State Commissioners from 33 other states, signed a letter to the FCC indicating support for continued State flexibility to maintain the UNE-P. The evidence in this proceeding demonstrates that

increased competition in Maryland exists in large measure because of the availability of UNE-P. With very limited UNE-P and resale, Maryland achieved a local competition level of only 4% as of December 2001. In six months time, according to the FCC's most recent report on the status of local competition, Maryland went from 4% to 6% in the level of competition due primarily to UNE-P. It appears that without UNE-P that growth vector will clearly be reduced. The Commission believes that any alteration from UNE-P as presently constituted would have significant adverse effects on the competitive market in Maryland. However, the Commission continues to assert that a FCC determination on these matters will not preempt further consideration by this Commission of the appropriate list of UNEs in Maryland.

B. §272/Affiliates

The Commission is concerned that Verizon's interactions with its affiliates are conducted on the same arms-length basis as its interactions with any unrelated CLEC, in order to ensure that local exchange customers do not subsidize the long distance customers. Consequently, the Commission intends to closely and actively monitor Verizon's compliance with the separate affiliate requirements and associated safeguards contained in §272 of the 1996 Act. In particular, the Commission will carefully review the biennial audit that Verizon is required to obtain and pay for under §272(d)(1), which audit must be submitted to this Commission in accordance with §272(d)(2). Furthermore, the Commission will participate fully in the biennial audit proceedings conducted by the FCC, and institute its own proceeding, if necessary.

C. E911

The Commission has reservations about Verizon's use of the information contained in the E911 database, which does not appear to be consistent with the purposes envisioned by the legislature when the E911 program was established. The E911 database was developed for a very specific purpose, to enable law enforcement and emergency service workers to locate people in emergency, and sometimes life threatening, situations. The E911 database was not developed for use in the manner Verizon has attempted to use it in this proceeding. Because the E911 database was not developed to provide local exchange carrier line counts, its use for this purpose is questionable, as are the results obtained through the database. Furthermore, these results are not verifiable. The Commission encourages Verizon to develop a more transparent and verifiable source of statistics to estimate the level of competition.

CONCLUSION

Upon implementation of these various operational enhancements, the Commission believes that continued development of a competitive market will occur in Maryland. That outcome is surely the intent of the 1996 Act and the FCC's goal as well. Thus, the envisioned reward of long distance entry to Verizon Maryland should be afforded them. To move Maryland more toward the national average in local competition is an outcome that will also surely benefit Maryland customers, both business customers and individual citizens alike.

Verizon is directed to respond to this letter with a written confirmation that Verizon will comply with the conditions set forth in items 1 through 10 above prior to filing its §271 application with the FCC.

By Direction of the Commission,

/s/*Catherine I. Riley*
Catherine I. Riley, Chairman

/s/*J. Joseph Curran, III*
J. Joseph Curran, III, Commissioner

/s/*Gail C. McDonald*
Gail C. McDonald, Commissioner

/s/*Harold D. Williams*
Harold D. Williams, Commissioner

cc: All Parties and Interested Persons of Record

DUPLICATE

BEFORE THE MARYLAND PUBLIC SERVICE COMMISSION

Case No 8921

In the Matter of the Review by the Commission Into Verizon Maryland Inc.'s Compliance with the Conditions of 47 U.S.C. § 271(c)

DIRECT TESTIMONY OF BRET L. MINGO

ON BEHALF OF CORE COMMUNICATIONS, INC.

Dated: July 15, 2002

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS?

A. My name is Bret L. Mingo. I am president and CEO of Core Communications, Inc. ("CoreTel"), a CLEC with substantial operations in Maryland. My business address is 209 West Street, Suite 302, Annapolis, Maryland 21401.

I. INTRODUCTION AND SUMMARY

Q. PLEASE DESCRIBE YOUR QUALIFICATIONS AND EXPERIENCE AS THEY RELATE TO THIS PROCEEDING?

A. As part of my responsibilities, I directly oversee all aspects of CoreTel's provision of telecommunications services, including interconnection with Verizon, provisioning of high capacity special access and PRI services from Verizon and other LECs, and provisioning of interLATA circuits from IXCs. Prior to founding CoreTel in 1997, I consulted to area ISPs regarding provisioning of special access and InterLATA circuits from telecommunications carriers.

Q. WHAT IS THE PURPOSE, GENERALLY, OF YOUR TESTIMONY?

A. The purpose of my testimony is to describe two anticompetitive interconnection policies that Verizon maintains in Maryland. First, I would like to discuss Verizon's refusal to use existing telecommunications equipment to interconnect with carriers, like CoreTel

that seek entrance facility interconnection with Verizon. Specifically, Verizon refuses to use existing facilities because they are "inventoried" as retail facilities. Rather than use existing facilities, Verizon constructs new facilities, which are both unnecessary and time consuming. Second, I would like to discuss Verizon's refusal to pass Calling Party Number ("CPN") over interconnection trunks to CoreTel. This unilateral Verizon greatly hampers CoreTel's ability to deploy new services.

II. VERIZON'S ENTRANCE FACILITY INTERCONNECTION POLICIES UNLAWFULLY DISCRIMINATE AGAINST CORE IN VIOLATION OF CHECKLIST ITEM 1

Q. PLEASE PROVIDE AN OVERVIEW OF THE VERIZON INTERCONNECTION POLICY THAT DISCRIMINATES AGAINST CORETEL?

A. As I mentioned above, Verizon's refusal to use existing facilities to provide interconnection to CoreTel discriminates against CoreTel in favor of Verizon and its retail organization. CoreTel has been the victim of this unilateral Verizon policy in three out of the four interconnection points (Baltimore, Damascus, and Mount Airy) that CoreTel has established with Verizon in Maryland, and Verizon recently informed me that Verizon would enforce this same unilateral policy against CoreTel in Salisbury. This has been an on-going problem for CoreTel since 1999. This was not an issue at our Easton, Maryland point of interconnection because there were no existing facilities at that location.

Q. HAS CORETEL RAISED THIS ISSUE WITH THE COMMISSION IN OTHER PROCEEDINGS?

A. Yes. CoreTel filed a complaint against Verizon Maryland in October 1999 (Case 8881). That proceeding is ongoing.

Q. HAS VERIZON RAISED ANY ISSUES OF TECHNICAL FEASIBILITY REGARDING THE USE OF EXISTING FACILITIES TO PROVIDE ENTRANCE FACILITY INTERCONNECTION TO CORETEL?

A. No. So far as I can tell, Verizon admits that use of existing facilities is technically feasible for the type of interconnection that CoreTel establishes with Verizon. Indeed, in the unrebutted direct testimony of Todd Lesser in Case 8881 demonstrates that Verizon has provided exactly the type of interconnection that CoreTel seeks to a carrier called North County Communications in West Virginia. I've attached a copy of that testimony hereto as Exhibit A.

Q. DOES VERIZON CONSISTENTLY REQUIRE DEDICATED FACILITIES FOR INTERCONNECTION PURPOSES IN YOUR EXPERIENCE?

A. No. As I showed above, Verizon has provided exactly the type of interconnection that CoreTel seeks to at least one other carrier in at least one other state. In my experience, Verizon does not consistently, or rationally, require the use of dedicated physical facilities

for interconnection purposes.

As another, more subtle example, Verizon has delivered a special access (retail) DS3 circuit to CoreTel at our Damascus Wire Center (located in the Maryland portion of the D.C. LATA), using the same multiplexer and associated transport facilities that Verizon had previously installed, and has used ever since, for interconnection (wholesale) purposes. So it seems that Verizon is willing to use "wholesale" facilities for new "retail" services, but will not use "retail" facilities for new "wholesale" facilities. The explanation for this inconsistency in Verizon policy is simple: Verizon prefers to provide "retail" services than "wholesale," interconnection services because Verizon makes more money providing retail services.

Q. WHY DOES VERIZON'S FAILURE TO PROVIDE THIS TYPE OF INTERCONNECTION VIOLATE THE SECTION 271 COMPETITIVE CHECKLIST?

A. Although I am not a lawyer, I know that item one of the competitive checklist requires Verizon to provide CLECs with interconnection at any technically feasible point, according to terms and conditions that are just, reasonably, and nondiscriminatory. The nondiscrimination term forbids Verizon from discriminating among interconnecting carriers, or in favor of Verizon itself. There is no technical reason for Verizon's refusal; rather, Verizon seeks to benefit its retail organization by providing it faster service.

For example, if a carrier orders high-capacity special access ("retail") from Verizon, those

services are delivered by Verizon's retail organization in a month or less from existing facilities. If a carrier orders high-capacity interconnection ("wholesale") services from Verizon, those services are delivered by Verizon's wholesale organization six months to a year later, after new facilities are constructed. This discrimination is as obvious as it is ridiculous.

In Case 8881, Commission Staff filed very persuasive testimony that supports CoreTel's view. I've attached a copy of that testimony hereto as Exhibit B.

Q. HAS THIS TYPE OF INTERCONNECTION ISSUE COME UP IN ANY OTHER SECTION 271 PROCEEDING?

A. Not that I'm aware of. Most CLECs use the "collocation" method of interconnection, which makes sense for carriers that buy unbundled network elements ("UNEs") from Verizon. At present, CoreTel does not purchase UNEs from Verizon. Rather, CoreTel uses its own facilities or facilities leased from other carruers. As noted in the testimony of Doug Dawson, CoreTel is attempting to get dark fiber UNEs from Verizon, but that process is stalled. Moreover, neither SBC nor Qwest enforce a similar policy (as noted in the Lesser testimony attached hereto). In any event, I do not believe that it has been addressed in past section 271 proceedings because vocal commenters in those past proceedings apparently do not utilize this method of interconnection.

III. VERIZON'S POLICY TO REFUSE TO PASS CPN TO OVER INTERCONNECTION TRUNKS UNLAWFULLY DISCRIMINATES AGAINST CORE IN VIOLATION OF CHECKLIST ITEM 1

Q. PLEASE DESCRIBE CPN?

A. CPN is essentially an end user's telephone number, which is passed between carriers terminating calls. Verizon presently passes CPN to IXCs over Multifrequency ("MF") trunks, which is the kind that CoreTel uses to interconnect locally with Verizon. Verizon also passes CPN to CLECs over SS7 trunks.

Q. WHY WON'T VERIZON PASS CPN TO CORETEL OF MF TRUNKS?

A. Verizon has no technical issue with CoreTel's request. This is another Verizon "policy" – a policy that Verizon won't pass CPN over MF trunks to CLECs for local services. I believe that Verizon would like CoreTel to establish an SS7-based trunking network. However, CoreTel has no desire or need to establish such a network for the local data applications that CoreTel provides. When CoreTel needs SS7 to support a product for its end users, CoreTel will deploy SS7. Verizon has no right to dictate what type of signaling network that CoreTel utilizes.

Q. HAS VERIZON OFFERED ANY ALTERNATIVE OTHER THAN SS7 TO OBTAIN CPN?

A. Yes. Verizon has stated that it would pass CPN to CoreTel if CoreTel were to buy retail IXC trunks from Verizon. As a CLEC, however, CoreTel has no need to buy retail trunks. Verizon clearly is just trying to raise CoreTel's cost of doing business.

The functionality that CoreTel requests is a readily available feature of all MF trunks. As such, the only explanation for Verizon's refusal is its desire to slow roll CoreTel's business plan and market entry strategy by providing discriminatory interconnection. However, these discriminatory interconnection practices violate the section 271 checklist, and therefore, the Commission should reject Verizon's effort to obtain interLATA long distance authority in Maryland.

IV. CONCLUSION

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. YES, IT DOES.

TAB A

BEFORE THE MARYLAND PUBLIC SERVICE COMMISSION

Case No 8881

In the Matter of the Complaint of Core Communications, Inc. against Verizon Maryland, Inc. for Breach of an Interconnection Agreement And Request for Immediate Relief

DIRECT TESTIMONY OF TODD LESSER

ON BEHALF OF CORE COMMUNICATIONS, INC.

Dated: September 20, 2001

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS?

A. My name is Todd Lesser. My business address is 3802 Rosecrans Street, #485, San Diego, CA 92110. My telephone number is (619) 364-4750.

Q. PLEASE DESCRIBE YOUR QUALIFICATIONS AND EXPERIENCE AS THEY RELATE TO THIS PROCEEDING?

A. I am President of North County Communications ("NCC"), and I have had that position since I founded NCC in 1995. NCC is a privately-held, facilities-based competitive local exchange carrier based ("CLEC") in San Diego, California. I have substantial experience in telecommunications, including obtaining local interconnection with a number of Bell Operating Companies, including Qwest, SBC, and Verizon.

Q. PLEASE DESCRIBE THE TYPE OF INTERCONNECTION NCC HAS OBTAINED TO DEPLOY ITS LOCAL TELECOMMUNICATIONS SERVICES.

A. In deploying local telecommunications services to its customers, NCC has established entrance facility interconnection with SBC, Qwest, and Verizon.

Q. PLEASE DESCRIBE YOUR ENTRANCE FACILITY INTERCONNECTION EXPERIENCE WITH SBC AND QWEST.

A. SBC and Qwest routinely establish CLEC entrance facility interconnection with NCC in approximately 30 days. In so doing, both SBC and Qwest treat requests for entrance facility interconnection the same way SBC and Qwest treat requests for special access service, which is analogous to CLEC entrance facility interconnection. Both SBC and Qwest deploy CLEC entrance facility channel capacity over a SONET ring shared by multiple SBC and Qwest customers, including CLECs, long distance companies, and retail end users. Neither SBC nor Qwest mandate deployment of any separate

"wholesale" facilities to provide entrance facility interconnection to CLECs. Rather both SBC and Qwest use existing capacity on shared SONET rings to provide entrance facility interconnection to CLECs, such as NCC.

Q. PLEASE CONTRAST NCC'S EXPERIENCE IN OBTAINING ENTRANCE FACILITY INTERCONNECTION WITH SBC AND QWEST TO THAT OF VERIZON.

A. In contrast to the relatively straightforward practices of SBC and Qwest, Verizon has taken the position that it will not provision CLEC entrance facility interconnection over shared SONET rings using existing capacity. Rather than use existing spare capacity, Verizon deploys new dedicated SONET rings and multiplexer pairs in providing entrance facility interconnection to CLECs. These practices are needlessly expensive and create needless delay.

Regarding cost, conservatively I estimate that Verizon incurs at least $100,000 in expenses in deploying a dedicated SONET ring and multiplexer pair in establishing a single CLEC entrance facility interconnection. I don't know how Verizon recovers the cost of these buildouts; however, I do know that Verizon could avoid these expenses if it deployed CLEC entrance facility interconnection the same way that SBC and Qwest provide CLEC entrance facility interconnection.

Regarding delay, while it takes SBC and Qwest approximately 30 days to establish CLEC entrance facility interconnection, it takes Verizon over a year in some instances to provide CLEC entrance facility interconnection. In my opinion, this is absolutely ridiculous, especially since it is entirely unnecessary for Verizon to deploy a

dedicated SONET ring and multiplexer pair to establish CLEC entrance facility interconnection.

As an example, it took Verizon over a year to provide CLEC entrance facility interconnection to NCC in Charleston, West Virginia. Interestingly, after repeated delays in establishing the "dedicated SONET ring," Verizon agreed to provide interconnection to NCC in Charleston, West Virginia over a shared retail SONET ring during July 2001. Verizon indicated that once it completed the "dedicated SONET ring," it would migrate NCC's traffic from the shared retail SONET ring to the dedicated SONET ring. Had Verizon agreed to this at the outset, I would have been operational in West Virginia approximately one year ago. Instead, due to Verizon's needlessly costly and time consuming process, I have just started to enter the West Virginia market.

Q. DO YOU HAVE ANYTHING ELSE TO ADD?

A. Yes. To briefly summarize, I have first-hand experience obtaining CLEC entrance facility interconnection with SBC, Qwest, and Verizon. What takes SBC and Qwest approximately 30 days, takes Verizon approximately one year. CLEC entrance facility interconnection takes a year in the Verizon territory because of Verizon's general refusal to provision CLEC interconnection capacity over SONET rings shared by Verizon's retail customers and interexchange carrier customers. Instead, Verizon builds out a new, dedicated SONET ring and deploys a pair of dedicated multiplexers for CLEC entrance facility interconnection, even in cases where ample spare capacity exists on SONET rings classified as "retail" by Verizon.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

IN THE MATTER OF THE COMPLAINT	*	
OF CORE COMMUNICATIONS, INC. VS.	*	CASE NO. 8881
VERERIZON MARYLAND, INC.	*	

DIRECT TESTIMONY

OF

STEVE MOLNAR

ON BEHALF OF THE STAFF
OF THE
PUBLIC SERVICE COMMISSION OF MARYLAND

September 21, 2001

TABLE OF CONTENTS

		Page
INTRODUCTION		1
TIME REQUIRED TO COMPLETE INTERCONNECTION		4
FACILITIES AVAILABLE AT CORE'S WIRE CENTER		6
PROVISION OF ENTRANCE FACILITIES		9
EQUAL IN QUALITY STANDARD FOR INTERCONNECTION		15
CONCLUSION – COUNT I		20
CONCLUSION – COUNTS II, III, IV, AND V		21
RECOMMENDATION		23
INTERCONNECTION DIAGRAMS	ATTACHMENT A	
AFFIDAVIT OF TODD LESSER	ATTACHMENT B	
VERIZON FCC TARIFF PAGE ON PROVISIONING INTERVALS	ATTACHMENT C	

INTRODUCTION

Q. PLEASE STATE YOUR NAME AND OCCUPATION.

A. My name is Steve Molnar. I am a regulatory economist in the Telecommunications Division of the Public Service Commission of Maryland.

Q. PLEASE OUTLINE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I received a Bachelor of Arts degree in accounting from Syracuse University in 1976 and a Master of Business Administration degree from Rensselaer Polytechnic Institute in 1981. I held various accounting positions in private industry until accepting employment with the Public Service Commission in 1984. Other positions I have held at the Commission include cost of capital analyst, fiscal administrator, and Assistant Chief Auditor, all in the Accounting Division.

Q. WHY WAS CASE NO. 8881 INSTITUTED?

A. Core Communications, Inc. ("Core") filed a complaint with the Commission on October 8, 1999, alleging that Verizon Maryland Inc. ("Verizon") breached its Interconnection Agreement with Core. On January 17, 2001,

Core filed an Amended Complaint that raised new issues for the Commission to consider.

Although Verizon eventually provided interconnection to Core, the Commission found that the issues raised in the Amended Complaint required further investigation.[1] More specifically, the Commission was concerned as to whether the terms of the Interconnection Agreement were followed, and whether Verizon treated Core in the same manner as it treated itself. The instant proceeding was instituted to examine these issues.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. The purpose of my testimony is to discuss certain issues raised in the Amended Complaint. The Amended Complaint consists of five counts that relate to Verizon's interconnection policies and practices as summarized below. My testimony will address all five counts. However, because the issues related to Counts II-IV are interrelated, I will discuss them together.

Count I: Verizon failed to provide interconnection within 45 days as specified in the Interconnection Agreement between the parties.

Count II: Verizon failed to provide interconnection on the same terms and conditions that it provides to its own retail customers.

Count III: Verizon failed to provide interconnection with spare facilities that were available at the time of the request for interconnection.

Count IV: Verizon unnecessarily delayed Core's entry into the marketplace with tactics that violated the Interconnection Agreement between the parties.

Count V: Verizon failed to provide interconnection within a reasonable time frame.

Q. WHAT RELIEF DOES CORE REQUEST FROM THE COMMISSION?

A. Core requests that the Commission find that Verizon breached its Interconnection Agreement with Core and that Verizon's practices violated Maryland and Federal law as described in each of the five counts.

TIME REQUIRED TO COMPLETE INTERCONNECTION

Q. WHAT IS THE ISSUE WITH RESPECT TO THE TIME FRAME IN WHICH VERIZON PROVIDED INTERCONNECTION TO CORE?

[1] Letter from Executive Secretary to Core and Verizon instituting Case No. 8881, dated February 26, 2001.

A. The Amended Complaint alleges that Appendix 1 §§4.4.1 – 4.4.5 of the Interconnection Agreement requires Verizon to provide interconnection within 45 days after interconnection is requested. Verizon denies Core's allegation and states that the provisions of the Interconnection Agreement that Core cites do not apply to initial requests for interconnection.

Q. WHEN DID CORE REQUEST INTERCONNECTION WITH VERIZON FOR ITS BALTIMORE WIRE CENTER AND HOW LONG DID IT TAKE FOR INTERCONNECTION ARRANGEMENTS TO BE COMPLETED?

A. On July 27, 1999, Core provided Verizon with forecasts of DS-3 circuits and routing codes that were necessary to direct traffic to Core's premises. This information was submitted to Core on Verizon's own work sheets. At the same time, Core requested interconnection between Core's Baltimore Wire Center ("BWC") located at 200 E. Lexington Street. and Verizon's Wire Center at 323 N. Charles Street. Core also requested that interconnection be completed 45 days later on September 10, 1999. According to Verizon's response to Staff's Data Request No. V-1, interconnection was not completed until December 23, 1999, which is 149 days or approximately five months after the initial request for interconnection.

Q. DID VERIZON PROVIDE INFORMATION TO CORE THAT EXPLAINED THE REASONS FOR THE DELAY IN INTERCONNECTION?

A. No. According to Core's Amended Complaint, when Core requested interconnection and provided Verizon with technical information on July 27, 1999, the letter contained a paragraph which read as follows:

> "Please confirm in writing if the requested interconnection activation date is acceptable, or, if it is not acceptable, please propose an alternative date, together with an explanation why such alternative date is appropriate."

Core states in its Amended Complaint that it did not receive a response to this provision.

Q. HOW WERE THE DETAILS ON INTERCONNECTION WORKED OUT BETWEEN THE PARTIES?

A. Although Verizon did not provide an alternative interconnection date as discussed above, the parties held a meeting on August 11, 1999, to further the discuss the details of the interconnection arrangement. The parties discussed the use of entrance facilities to provide interconnection and the availability of spare capacity on existing network facilities (*see*

Complaint, page 4). There were subsequent meetings and exchanges of correspondence to finalize the details of interconnection.

FACILITIES AVAILABLE AT CORE'S WIRE CENTER

Q. WAS THERE SPARE CAPACITY AND EQUIPMENT AVAILABLE THAT MIGHT MAKE INTERCONNECTION POSSIBLE?

A. Yes. With respect to available equipment, there was a fiber optic multiplexer available at Core's BWC. At the request of Verizon, this multiplexer was installed before Core requested interconnection to serve another Verizon customer in the same building. That customer eventually canceled its order and the multiplexer went unused. When Core requested interconnection, it planned to use that multiplexer to add its own traffic to the fiber strand.

Verizon then informed Core that Verizon policy did not permit more than one customer of record to be assigned to a single multiplexer even if spare capacity was available. Verizon also advised Core that even if the existing multiplexer were to be used by Core, Verizon's policy requires CLECs to purchase their own separate dedicated fiber strand and not share an existing strand even if capacity is available. This separate strand would also require Verizon to install another multiplexer at its Charles Street office.

With respect to available capacity, a fiber optic facility already existed that served both Core's BWC and Verizon's Charles Street Office. The BWC location housed other carriers in addition to Core as well as Verizon retail customers. The building is served with several fiber strands. A single fiber strand can carry the traffic of a number of different Verizon customers. Each customer needs a multiplexer to add their traffic to the fiber strand and drop it off somewhere along the fiber path. Verizon's wire center would also need a multiplexer to add or drop off traffic to the correct path along the strand.

Verizon advised Core that the standard provisioning interval for an entrance facility was four to six months and that Core should not expect interconnection to be completed before this time frame.[2] The additional time would be needed to provision a separate fiber strand and multiplexer that would be available for the exclusive use of Core.

Q. ARE RETAIL CUSTOMERS PERMITTED TO SHARE A FIBER PATH?

A. Yes. Retail customers may share a fiber path. The restriction imposed by Verizon that prohibits the sharing of a fiber ring applies only to competitive carriers.

---

[2] *See* Letter from Marcus Brackman of Verizon to Michael B. Hazzard, Counsel for Core, dated September 7, 1999.

Q. DID CORE PROVIDE ANY INFORMATION THAT RELATES TO INTERCONNECTION PRACTICES BY INCUMBENT CARRIERS IN OTHER STATES?

A. Yes. In response to Staff's Data Request No. C-2 to Core, Core provided an affidavit from Mr. Todd Lesser (Attachment B), President of North County Communications, a CLEC based in San Diego, California. Mr. Lesser states that SBC and Qwest routinely provide entrance facility interconnection in approximately 30 days. Mr. Lesser adds that the operating companies of these holding companies provide entrance facilities like any other form of special access and over facilities that are shared by CLECs, long distance carriers, and retail customers.

PROVISION OF ENTRANCE FACILITIES

Q. WHAT IS AN ENTRANCE FACILITY?

An entrance facility is the communication path that connects the network of a competitive local exchange carrier ("CLEC") with Verizon's network. An entrance facility is used in lieu of physical or virtual collocation. Verizon includes several provisions that relate to entrance facilities in its Access Services Tariff No. 217. For example, Section 6.8.1(D)(1), page 113a, reads as follows:

(D) Switched Transport Rate Elements

(1) Entrance Facility

The Entrance Facility monthly rate provides for the communication path between a customer's premises and the SWC of that premises and is assessed based on the capacity of the facilities provided (e.g., Voice Grade, DS1, or DS3). When Lineside Switched Access service is ordered, the Voice Grade Entrance Facility rate is assessed for each Lineside service requested unless the customer requests an Entrance Facility of higher capacity. The Entrance Facility rate is assessed when the customer premises and the SWC are in the same building. The Entrance Facility rate is in addition to the rates assessed for Direct Trunked Transport and Tandem Switched Transport.

Q. IS THE DEFINITION OF AN ENTRANCE FACILITY IN VERIZON'S MARYLAND TARIFF CONSISTENT WITH THE DEFINITION IN VERIZON'S INTERSTATE TARIFF FILED WITH THE FCC?

A. Yes. In responding to Core's original complaint filed on October 8, 1999, Verizon relied on its FCC tariff to support its contention that an entrance

facility was "for the sole use of the customer."[3] The identical phrase is used in Section 6.1.2 of Maryland Tariff No. 217. This provision reads:

> 6.1.2 Rate Categories (Cont'd)
>
> (A) Switched Transport (Cont'd)
>
> (1) Entrance Facility Rate Category
>
> An Entrance Facility provides the communication path between a customer's premises and the Telephone Company SWC of that premises for the sole use of the customer. The Entrance Facility category is comprised of a Voice Grade rate, a DS1rate or a DS3 rate. An Entrance Facility is required whether the customer's premises and the SWC are located in the same or different buildings. The types of facilities available for Entrance Facilities are described in 6.2.4 following. (Underlining added.)

Section 6.2.4 referenced in the above provision with respect to a DS3 reads:

> 6.2.4 Switched Transport Facilities (Cont'd)
>
> (c) DS3 Facility
>
> DS3 facilities are available for Entrance Facilities and Direct Trunked Transport facilities. A DS3 facility is capable of transmitting electrical signals at a nominal 44.736 Mbps, with the capability to channelize up to 672 voice-frequency

[3] Tariff F.C.C. No. 1, 4th Revised Page 139.1.

transmission paths. Compatible Interface Groups are described in 6.1.2 preceding.

Because access between local exchange carriers is used to complete local exchange calls, the appropriate governing tariff is the Maryland tariff.

Q. DO YOU AGREE WITH VERIZON THAT THE MARYLAND TARIFF PROVISION THAT LIMITS AN ENTRANCE FACILITY TO THE "SOLE USE OF THE CUSTOMER" EXPLICITY PROHIBITS CORE FROM OBTAINING AN ENTRANCE FACILITY THAT IS SHARED WITH NON-CLEC CUSTOMERS?

A. No. The "sole use" phrase does not prohibit CLECs from using shared entrance facilities. My interpretation of the phrase is that it restricts a customer from purchasing only a portion of a DS3 which would allow the customer to avoid paying the full rate. Alternatively, the customer could purchase a full DS3 but then resell any unused capacity that might exist. These options are possible because a DS3 can be multiplexed and shared just as a fiber strand can be shared. Thus, the "sole use" provision has a meaning that is quite different from that which Verizon suggests.

This phrase also serves to protect CLECs because it assures that Verizon will make a full DS3 available for the CLEC's use even if all of the capacity is not needed immediately. Thus, a competitive carrier will have

additional capacity available as it attracts more customers and its business grows. Because Core requested several DS3s, none of these concerns applied to Core's situation.

Q. DOES VERIZON'S TARIFF INCLUDE A PROVISION THAT IN ANY WAY PROHIBITS A CLEC FROM PURCHASING A DS3 FROM A SHARED FIBER STRAND FACILITY?

A. No. I could find no provision that requires a DS3 to be purchased from a dedicated fiber strand regardless of whether the DS3 would be used as an entrance facility or as a retail service.

Q. WHAT WAS THE REASON GIVEN BY VERIZON FOR NOT PROVIDING INTERCONNECTION USING THE EXISTING FIBER OPTIC RING?

A. Verizon stated that the existing fiber optic path was used to provide retail services and was not available to provide access to carriers who wished to interconnect with Verizon. Rather, Verizon needed to construct a new dedicated facility in order to complete the interconnection arrangements with Core. The time that was needed to construct the facilities delayed Core's ability to provide service to its own customers. I have attached three diagrams which depict the interconnection arrangements: (1) desired

by Verizon, (2) desired by Core, and (3) the configuration eventually implemented.

Diagram 1 shows the arrangement preferred by Verizon including separate multiplexers for each customer at the BWC and the fiber strand dedicated to Core's use. Diagram 2 depicts Core's preferred arrangement. This scenario makes uses of a shared multiplexer between Core and other retail customers located at the BWC and the sharing of a single fiber strand with retail customers. Diagram 3 reflects the configuration that was eventually implemented. It is virtually identical to Diagram 1 except that the second multiplexer at the BWC was removed because the retail customer canceled its order with Verizon. The only other change is the reduction in the number of DS3 circuits that Core eventually purchased.

Q. IS IT STANDARD POLICY FOR VERIZON TO PROVIDE ENTRANCE FACILITIES TO COMPETITIVE LOCAL CARRIERS ONLY VIA DEDICATED FACILITIES AS OPPOSED TO SHARED FACILITIES?

A. Yes. Verizon states that all interconnecting CLECs must order dedicated entrance facilities and may not use a shared facility. Therefore, Verizon claims that it did not discriminate in its treatment of Core but, rather, followed its established requirement that entrance facilities can only be

provided on a dedicated basis. If all carriers are treated alike, there can be no claim of discrimination.

However, the extent to which Verizon is discriminating among carriers is not at issue. The issue is whether or not Verizon is discriminating among carriers with respect to Verizon's own retail customers. This is addressed in more detail later in my testimony.

EQUAL IN QUALITY STANDARD FOR INTERCONNECTION

Q. DOES THE TELECOMMUNICATIONS ACT OF 1996 ("1996 ACT") ESTABLISH INTERCONNECTION REQUIREMENTS THAT APPLY TO THE ISSUES SET FORTH IN CORE'S COMPLAINT?

A. Yes. Section 251(c)(2) creates a duty for incumbent LECs (local exchange carriers) "to provide... any requesting telecommunications carrier, interconnection with a LEC's network...at any technically feasible point within the carrier's network...that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."

Q. IS INTERCONNECTION AT CORE'S BALTIMORE WIRE CENTER TECHNICALLY FEASIBLE?

A. Yes. Verizon does not dispute that interconnection is technically feasible. Moreover, Verizon activated interconnection at this location on December

23, 1999. However, the issue as to whether Verizon provided interconnection that is equal in quality to that provided to itself remains open. Verizon also believes that although it is required to provide interconnection at any technically feasible point, it is not required to provision interconnection in any prescribed way. Core alleges that Verizon advised Core that "what is possible is often different from what is permissible." [4]

In response, Core alleges that Verizon's own interstate tariff requires that DS-1 circuits be provided within 9 business days and that a DS-3 be provisioned within 20 business days. Core alleges that a retail dedicated DS-3 is no different than a DS-3 entrance facility and that Verizon's construction delay constitutes unlawful discrimination.

Moreover, the Federal Communications Commission ("FCC") has addressed the relationship of interconnection that an incumbent carrier (Verizon) provides to itself. In the First Report and Order, paragraph 225, the FCC concluded:

> "We also note that section 251(c)(2) requires interconnection that is "at least" equal in quality to that enjoyed by the incumbent LEC itself."

[4] *See* Letter from Michael B. Hazzard, Counsel for Core, to Marcus Brackman of Verizon, dated September 1, 1999.

Q. IS THE INTERCONNECTION THAT CORE RECEIVES EQUAL IN QUALITY TO THAT WHICH VERIZON PROVIDES TO ITSELF IN SERVING RETAIL CUSTOMERS?

A. The answer depends on what is meant by "quality." If quality refers to a standard such that the technical characteristics and features are the same, then Core and Verizon's retail customers have equal interconnection. If, however, quality includes equal treatment with respect to timing of installation and/or other provisioning issues, then it becomes less clear that Verizon has met the standard.

Q. HAS THE FCC PROVIDED ANY GUIDANCE WITH RESPECT TO THIS ISSUE?

A. Yes. Section 51.305(a)(3)[5] of the FCC's rules states in part that an incumbent LEC (local exchange carrier) shall provide interconnection:

> That is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party....This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier. (Underlining added.)

I believe that a requesting carrier would perceive the equal interconnection standard to include installation intervals that are equal to those Verizon's provides to itself in serving retail customers. Anything less would mean that Verizon would have the ability to create an advantage for itself by serving its retail customers expeditiously while delaying the market entry of its potential competitors.

Q. WHAT ADVANTAGE WOULD AN INCUMBENT CARRIER ENJOY IF IT WAS ABLE TO DELAY THE MARKET ENTRY OF A COMPETITOR?

A. The immediate benefit to an incumbent carrier is that delayed entry creates additional costs for competitors. The fact that the competitor cannot operate and earn revenue while it continues to incur expenses only adds to the disadvantages that a new CLEC faces. The longer the delay, the greater the cost the incumbent carrier can impose and the less likely that the competitor will succeed in the long run. In addition, if the competitor has a business plan that targets certain customer groups, then the incumbent can market its services more aggressively during the period of delay. The Telecommunications Act of 1996 and its

[5] *See* 47 CFR 51.305(a)(3)(1996).

subsequent implementation by the FCC reflect the effort that was undertaken to minimize the opportunity for incumbent carriers to engage in these kinds of activities.

Q. ARE THERE ANY OTHER RULES THAT ADDRESS THE TIMING OF I INTERCONNECTION IN A MORE SPECIFIC WAY?

A. Yes. Part 51, Section 51.305(a)(5) states in part that an incumbent LEC shall provide interconnection:

> On terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules including, but not limited to, offering such terms and conditions equally to all requesting telecommunications carriers, and offering such terms and conditions that are no less favorable than the terms and conditions the incumbent LEC provides such interconnection to itself. This includes, but is not limited to, the time within which the incumbent LEC provides such interconnection. (Underlining added.)

Thus, it is clear that the FCC requires provisioning intervals for interconnection that apply to CLECs to be the same as those which apply to the incumbent carrier, or Verizon. If the provisioning times are different, then Verizon is acting in a discriminatory fashion.

CONCLUSION – COUNT I

Q. DO YOU AGREE WITH CORE'S ALLEGATION THAT VERIZON FAILED TO PROVIDE INTERCONNECTION WITHIN 45 DAYS AS REQUIRED BY SECTION 4.4.4 OF THE INTERCONNECTION AGREEMENT BETWEEN THE PARTIES?

No. First, there is doubt as to whether or not section 4.4.4 of the Interconnection Agreement ("Agreement") even applies to Core's initial request for interconnection. Section 4.4.4 states that the "Interconnection Date in a new LATA shall not be earlier than forty-five (45 Days) after receipt by BA of all complete and accurate trunk orders and routing information." (Underlining added.) The provisions that address initial interconnection are sections 3.0 and 4.0 of the Interconnection Agreement Appendix which provide that Interconnection Activation Dates are established by the parties and included as Schedule 3.0. However, Schedule 3.0 states that the completion dates for interconnection were "TBD" or "to be determined." Therefore, the Interconnection Agreement does not establish a deadline when interconnection must be completed.

However, even if section 4.4.4 does apply, the plain language of this provision does not establish that interconnection must be provided within 45 days. Section 4.4.4. reads in part "the Interconnection Activation Date in a new LATA shall not be earlier than forty-five (45) days after receipt by Verizon of all complete and accurate trunk orders and routing information." (Underlining added.) Section 4.4.4 states that interconnection would occur after 45 days, not within 45 days. Therefore, I do not believe that Verizon was required to provide interconnection to Core with 45 days.

CONCLUSION – COUNTS II, III, IV, AND V

Q. WHAT ARE YOUR CONCLUSIONS CONCERNING THE REMAINING FOUR COUNTS SPECIFIED IN CORE'S COMPLAINT?

A. With respect to Counts II, III, IV, and V, I conclude that Verizon:

1. Failed to provide interconnection to Core on the same terms and conditions that it provides to itself;
2. Delayed Core's entry into the marketplace by requiring Core to use a dedicated entrance facility; and
3. Failed to provide interconnection in a reasonable time frame.

Q. WHAT IS THE BASIS FOR YOUR CONCLUSIONS?

A. As discussed in my testimony, the FCC requires incumbent carriers to provide interconnection on terms that are "perceived" to be equal by the requesting carrier and, in addition, within the same time frames as the incumbent carrier provides to itself. Verizon's FCC tariff provides for the installation of a retail DS3 with 20 business days (Attachment C). It took Verizon 149 calendar days to provide DS3 interconnection to Core at the BWC.

Rather than permit Core to use an available multiplexer on site at the BWC, Verizon required that the multiplexer be inventoried and not shared with other potential customers at 200 E. Lexington Street. Verizon also did not permit Core to share a fiber ring with retail customers even though Verizon permits its own retail customers to share fiber capacity. These interconnection procedures served to delay the entry of Core into the market place and create an artificial competitive advantage for Verizon.

RECOMMENDATION

Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION?

A. Based on my conclusions, I recommend that the Commission direct Verizon to add a new regulation to all appropriate Maryland tariffs that states that Verizon will provide interconnection to requesting carriers that is equal in quality, including the time required for installation, to that which Verizon provides to its own retail customers. This requirement will remove any ambiguity in the provisioning of interconnection and remove the opportunity for Verizon to treat its customers differently from its competitors without violating its own tariffs.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

BEFORE THE

PUBLIC SERVICE COMMISSION
OF MARYLAND

IN THE MATTER OF THE COMPLAINT	*	
OF CORE COMMUNICATIONS, INC. VS.	*	**CASE NO. 8881**
VERERIZON MARYLAND, INC.	*	

REBUTTAL TESTIMONY

OF

STEVE MOLNAR

ON BEHALF OF THE STAFF
OF THE
PUBLIC SERVICE COMMISSION OF MARYLAND

OCTOBER 19, 2001

INTRODUCTION

Q. PLEASE STATE YOUR NAME AND OCCUPATION.

A. My name is Steve Molnar. I am a regulatory economist in the Telecommunications Division of the Public Service Commission of Maryland.

Q. ARE YOU THE SAME STEVE MOLNAR WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING ON BEHALF OF THE STAFF?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS PROCEEDING?

A. The purpose of my rebuttal testimony is to respond to certain issues raised in the Reply Panel Testimony of David J. Collins, John R. Gilbert, and David Visser ("Panel Testimony").

Q. DO YOU AGREE WITH THE PANEL TESTIMONY THAT THE TELECOMMUNICATIONS ACT OF 1996 ("THE ACT") IMPOSES A DUTY ON ALL TELECOMMUNICATIONS CARRIERS TO

INTERCONNECT DIRECTLY OR INDIRECTLY WITH THE FACILITIES OF OTHER CARRIERS?

A. Yes. However, the reference made by the Panel Testimony is incomplete. The general duty to interconnect, as stated in the question, applies to all local exchange carriers, which includes competitive local exchange carriers ("CLECs") and incumbent local exchange carriers ("ILECs"). However, the Act also establishes two sets of obligations under the general duty to interconnect: the first applies to all local exchange carriers, Sec. 251(b); and the second applies only to ILECs, Sec. 251(c). The latter obligations that apply to ILECs under Sec. 252(c) are more specific and rigorous that the general duty to interconnect as discussed in the Panel Testimony. Moreover, Sec. 251(c)(2)(C) requires ILECs to provide interconnection "to any requesting telecommunications carrier...that is at least equal in quality to that provided...to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection..." (Emphasis added.) Thus, the Act does much more than simply require interconnection; it imposes a standard on ILECs such as Verizon that requires interconnection to be equal to that which it provides to itself or any other party.

As I discussed in my Direct Testimony,[4] the Federal Communications Commission ("FCC") has found that the "equal in quality" standard must reflect the service quality as perceived by the requesting carrier. According to the FCC's own rules on interconnection, which cannot be ignored, this includes the installation intervals for provisioning interconnection service.

Q. DO YOU AGREE WITH THE PANEL TESTIMONY AT PAGES 6-7 THAT VERIZON DOES NOT INTERCONNECT WITH ITS RETAIL CUSTOMERS?

A. No. Verizon is attempting to cloud the application of the Act and the FCC's rules by claiming that Verizon only interconnects with carriers and not retail customers. According to Verizon, there should be no comparison between the provision of interconnection to carriers and the provision of retail services to retail customers. Contrary to Verizon's contention, if it were not appropriate to make such a comparison, the plain language of the Act and the FCC's rules would have no meaning.

As a practical matter, CLECs have similar characteristics as Verizon's large retail customers. Both must connect with Verizon's network for the

0[4] *See* Molnar Direct, page 17.

exchange of traffic and both are billed for the services they receive. The principal difference is that a Verizon retail customer is also the end user, whereas with a CLEC, the traffic must be delivered to the ultimate end user, the CLECs' customers.

Q. DO YOU AGREE WITH THE PANEL TESTIMONY ON PAGE 14 THAT THE COMPARISON YOU MADE TO THE INSTALLATION OF DS-3 SERVICE DOES NOT APPLY?

A. No. Core obtained DS-3 service from Verizon for the purpose of interconnecting with Verizon. As a requesting carrier, Core was entitled to, and Verizon was obligated to provide, interconnection that was equal to that provided to any other party. Verizon failed to meet this obligation.

Q. THE PANEL TESTIMONY EXPLAINS ON PAGES 17-18 THAT THE PROVISIONING OF INTERCONNECTION TO CORE WAS COMPARABLE AND, IN FACT, QUICKER THAN THAT PROVIDED TO OTHER CLECs. DO YOU BELIEVE THAT THIS INFORMATION ABSOLVES VERIZON OF CORE'S CLAIM THAT ITS ENTRY INTO THE MARKETPLACE WAS UNNECESSARILY DELAYED?

A. No. The length of time for provisioning interconnection to Core relative to provisioning interconnection to other carriers is irrelevant because that is not the standard. If it were, ILECs could take as long as they wanted to provide interconnection and, as long as they took the same amount of time for all carriers, there could be no issue of improper behavior. For example, if an ILEC took three years to provide interconnection to requesting carriers, and yet took only thirty days to provide service to its retail customers, under Verizon's argument there could be no claim of anticompetitive behavior because all carriers were treated the same. This interpretation is clearly wrong and not consistent with the pro-competitive goals of the Act.

Q. WHY IS IT IMPORTANT THAT VERIZON BE REQUIRED TO PROVISION INTERCONNECTION TO REQUESTING CARRIERS THAT IS EQUAL TO THAT WHICH IT PROVIDES TO ITSELF?

A. Any incumbent carrier, including Verizon, has an incentive to delay the market entry of its potential competitors. The sooner competitors enter the market, the sooner Verizon loses revenue that it would otherwise receive itself. Conversely, if the entry of competitors can be delayed, then revenue that Verizon would lose could be maintained at least until the competitor actually begins operating. Moreover, every day that a carrier

cannot operate and provide service to customers is a day in which costs are incurred that are not offset with revenue. These conditions add to the financial burden of new CLECs and make it more difficult for CLECs to become viable going concerns over time. Any ILEC would have an incentive to create or promote these conditions if regulatory safeguards did not intervene.

It is also in the interest of incumbent carriers to delay market entry of competitors in order to either maintain existing customers or attract new ones. For example, If a business is considering obtaining service from a carrier other than the business' current provider, the incumbent has a substantial advantage in attracting the customer if can provide service in 30 days whereas a competitor cannot deliver service for several months. Incumbent service providers in any industry benefit from the delay of competitors into the marketplace.

Q. ON PAGES 21-22 THE PANEL TESTIMONY POINTS TO AN FCC ORDER TO JUSTIFY ITS POSITION THAT THE EQUAL IN QUALITY STANDARD FOR INTERCONNECTION DOES NOT APPLY TO VERIZON'S RETAIL SERVICE. DO YOU AGREE?

A. No. Similar to the example provided earlier in my testimony, Verizon has provided an incomplete discussion of what the FCC order concludes. In fact, the FCC order cited by Verizon states exactly what my testimony recommends; that the appropriate standard for interconnection is the comparison with retail service.[5]

Q. DOES THE FCC ORDER CITED BY VERIZON STATE, AS VERIZON CLAIMS, THAT THE FCC'S RULES FOR THE DESIGN AND OPERATION OF INTERCONNECTION FACILITIES REQUIRE THE SAME TECHNICAL CRITERIA AND SERVICE STANDARDS THAT ARE USED FOR INTEROFFICE TRUNKS (PAGES 21-22)?

A. Yes. However, the quotation supplied by Verizon applies to the "design and operation" of interconnection service quality and not to the provisioning of interconnection. In the following paragraph in the order, the FCC clearly states that its rules require an ILEC to "...provide interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operations."[6] (Emphasis added.) The New York 271 Order goes on to state in the same paragraph that the FCC's rules "interpret this

1[5] In the Matter of the Application by Bell Atlantic New York for Authorization Under 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Released December 22, 1999, at ¶65 ("New York 271 Order").

obligation to include, among other things, the incumbent LEC's installation time for interconnection service and its provisioning of two-way trunking arrangements."[7] (Emphasis added.) A similar finding was made by the FCC with respect to the 271 application filed by SBC Communications, Inc. ("SWBT") for Kansas and Oklahoma. The FCC reiterated that "we are persuaded that SWBT provides competing carriers with interconnection trunking in both Kansas and Oklahoma that is equal-in-quality to the interconnection SWBT provides to its own retail operations...."[8]

Thus, there is no ambiguity in what the FCC's rules mean. My recommendation, that the Commission direct Verizon to add a new regulation to its Maryland tariffs that states that Verizon will provide interconnection to requesting carriers that is equal in quality, including the time required for installation, to that which Verizon provides to its own retail customers, is not a new requirement. It is simply a re-statement in the Maryland state jurisdiction of what the FCC already requires in the interstate jurisdiction.

2[6] *Ibid.*
3[7] *Ibid.*
[8] In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, Released January 22, 2001, at ¶224.

Q. THE PANEL TESTIMONY ON PAGES 22-24 STATES THAT THE MARYLAND CARRIER-TO-CARRIER GUIDELINES PERFORMANCE STATNDARDS AND REPORTS REQUIRE THAT CLEC INTERCONNECTION TRUNKING BE COMPARED TO TRUNKING PROVIDED TO INTEREXCHANGE CARRIERS ("IXCs"). DO YOU AGREE?

A. No. The Panel Testimony refers to PR-1-09 and PR-2-09 as the basis for its contention that interconnection provisioning should be evaluated based on the provisioning of trunks to IXCs. These metrics are titled respectively "Average Interval Offered – Total" and "Average Interval Completed – Total." I have attached the beginning pages of each metric's respective section in the performance standards document (Attachment A). On page two (PR-1-09 and page 3 (PR-2-09) I have highlighted the performance standard that applies to each metric. In both examples, the performance standard is specifically defined as "Parity with VZ retail." (Emphasis added.)

Q. IN YOUR OPINION, IS THE PERFORMANCE STANDARD YOU RECOMMEND AN OBJECTIVE THAT VERIZON CAN REASONABLY BE EXPECTED TO ACHIEVE?

A. Yes. In my Direct Testimony, I discussed the provisioning interval for retail DS-3 service that Verizon includes in its federal tariff, which is 20 business days.[9] Core obtained a DS-3 entrance facility to interconnect with Verizon. I also discussed in my Direct Testimony other information provided by Core which explained that certain incumbent carriers in other regions provide entrance facilities within 30 days to requesting carriers.[10] In addition to this information, the FCC order granting Verizon 271 approval in Massachusetts discusses provisioning times for interconnection. The FCC states that "Verizon's performance data show that the average time to install interconnection trunks for competitive LECs for the months of September through December 2000 was 27 days, and 49 days for interexchange carriers."[11] An even better result was realized by SWBT in Texas. In granting SWBT's 271 application, the FCC found that "In February, March, and April, SWBT met the 20 business day benchmark with an average installation interval (for installation of interconnection trunks) of 16.5, 17.4, and 17.3 business days respectively for competitive LECs."[12] (Clarification added.) Therefore, it is clear that

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0[9] *See* Molnar Direct, page 16.
1[10] *Ibid.*, page 8.
2[11] Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 01-9, Released April 16, 2001, at ¶187.
[12] Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the

Verizon and other ILECs already have the ability to provide interconnection to CLECs within comparable time frames as that offered for retail service. Yet, when the installation times for interconnection in other states are compared to the 149-day interval it took for Verizon to provide interconnection to Core, it becomes apparent that a new standard is needed for Maryland.

Q. WHAT STANDARD DO YOU RECOMMEND THAT THE COMMISSION ADOPT TO PROMOTE REASONABLE INSTALLATION TIMES FOR CLEC INTERCONNECTION?

A. I recommend that the Commission direct Verizon to add a new regulation to all appropriate Maryland tariffs that states that Verizon will provide interconnection to requesting carriers that is equal in quality, including the time required for installation, to that which Verizon provides to its own retail customers.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

Telecommunications Act of 1996To Provide In-Region, InterLATA Services In Texas, CC Docket No. 00-65, Released June 30, 2000, at ¶71, footnote 149.

TAB B

Section 3

Provisioning Performance

(PR)

	Function	Number of Sub-metrics
PR-1	Average Interval Offered	10
PR-2	Average Interval Completed	11
PR-3	Completed within Specified Number of Days (1-5 Lines) **[In Dispute]**	11
PR-4	Missed Appointments	8
PR-5	Facility Missed Orders **[In Dispute]**	3
PR-6	Installation Quality	3
PR-7	Jeopardy Reports	1
PR-8	Open Orders in a Hold Status	2
PR-9	Hot Cut Performance **[In Dispute]**	3

Function:

PR-1 Average Interval Offered

Definition:

This metric measures the average interval offered for completed and cancelled orders. For **POTS and Specials**, the Average Interval Offered is also known as the Average Appointed Interval. The average number of business days between order application date and committed due date (appointment date). The application date is the date that a valid service request is received. **Note:** Orders received after 5:00PM are counted as received the next business day.

Complex Orders include: 2-Wire Digital Services (ISDN) and 2-Wire xDSL Loops and line sharing.

Specials Orders include: All Designed circuits, 4-Wire circuits (including Primary rate ISDN and 4-Wire xDSL services), all DS0, DS1, and DS3 circuits. EEL and IOF are reported separately.

Trunks: The amount of time in business days between receipt of a clean ASR (received date restarted for each Supplemental order) and due date committed to from FOC. Measures service orders completed between the measured dates.

Notes:
(1) The offered intervals for cancelled orders are counted in the month during which the cancellation occurs.
(2) Sub-metrics reported according to line size groupings will be based on the total lines in the orders.

Exclusions:

- VZ Test Orders.

- Orders where customers request a due date (DD) that is beyond the standard available appointment interval. (X Appointment Code[1]).
- Verizon Administrative orders.
- Orders with invalid intervals *(e.g. Negative intervals or intervals over 200 business days – indicative of typographical error).*
- Additional segments (pages or sections on individual orders) on orders (parts of a whole order are included in the whole).
- Suspend for non-payment and associated restore orders.
- Orders that have neither completed nor been cancelled.
- Orders requiring manual loop qualification.

  Note: 2-wire xDSL orders that require manual loop qualification have an **R** populated in the ***Required*** field of the LR (indicating that a manual loop qualification is required).
- Disconnects are excluded from all sub-metrics ***except*** sub-metric PR-1-12 which measures disconnects.

Performance Standard:

Metrics PR-1-01 through 09 and PR-1-12 (except PR-1-01 and 02, UNE 2 Wire xDSL Loops): Parity with VZ Retail.

Metrics PR-1-01 and 02, UNE 2 Wire xDSL Loops: No standard.

The published interval for one (1) to five (5) 2 Wire xDSL Loops is six (6) business days (pre-qualified).
Refer to the Verizon web-site documented in Appendix L for the specific intervals offered for products and services.

Report Dimensions

Company:	Geography:
• VZ Retail • VADI [2] • CLEC Aggregate [3] • CLEC Specific	• POTS and Complex: Maryland • Specials & Trunks: Maryland

[1] Orders that are or should be X appointment coded. Effective 2/00, VZ will automate appointment coding when orders are received via LSOG4. CLECs that are not using LSOG4 are responsible to perform the X coding.
[2] Reported for DSL metrics only
[3] Excludes Verizon Advanced Data Incorporated

Function:

PR-2 Average Interval Completed

Definition:

This metric measures the average interval completed. The Average Interval completed for POTS and Specials is the average number of business days between order application date and actual work completion date. The application date is the date that a valid service request is received. **Note:** Orders received after 5:00PM are counted as received the next business day.
Coordinated Cut-over (Hot Cut) Loop orders are considered complete according to definition documented in the PR-9 Hot Cut metric section of this document.

DSL Loops are considered complete according to definition documented in the PR-4 metric section of this document.

Average Interval Completed Trunks: The Average Interval Completed for Trunks is the amount of time in business days between receipt of a clean ASR (received date restarted for each supplemental order) and the date the order is completed and the customer is notified. Measures service orders **completed** between the measured dates.

Note:
(1) Sub-metrics reported according to line size groupings are based on the total lines in the orders.

Exclusions:

- VZ Test Orders
- Orders where customers request a due date that is beyond the standard available appointment interval. (X Appointment Code).
- Verizon Administrative orders
- Orders with invalid intervals *(e.g. Negative Intervals or intervals over 200 business days – indicative of typographical error).*
- Additional Segments on orders (parts of a whole order are included in the whole).
- Orders that are not complete. (Orders are included in the month they are completed).
- Suspend for non-payment and associated restore orders.
- Orders completed late due to any end-user or CLEC caused delay.
- Orders requiring manual loop qualification
- **Note:** 2-wire xDSL orders that require manual loop qualification have an **R** populated in the ***Required*** field of the LR (indicating that a manual loop qualification is required).For 2 Wire Digital Services, 2 Wire xDSL Loops and 2 Wire xDSL Line Sharing, orders missed due to facility reasons.
- Trunks orders where the customer desired due dates are > 18 days.
- Disconnects are excluded from all sub-metrics ***except*** sub-metric PR-2-18, which measures disconnects.

Performance Standard:

Metrics PR-2-01 through 09 and PR-2-18 (except PR-2-01 and 02, UNE 2 Wire xDSL Loops): Parity with VZ Retail.

Metrics PR-2-01 and 02, UNE 2 Wire xDSL Loops: No standard.

The published interval for one (1) to five (5) 2 Wire xDSL Loops is six (6) business days

(pre-qualified).
Refer to the Verizon web-site documented in Appendix L for intervals on specific products and services.

Report Dimensions	
Company: • VZ Retail • CLEC Aggregate • CLEC Specific	Geography: • POTS and Complex: : Maryland • Specials & Trunks: Maryland

DUPLICATE

Case No 8921

In the Matter of the Review by the Commission Into Verizon Maryland Inc.'s Compliance with the Conditions of 47 U.S.C. § 271(c)

DIRECT TESTIMONY OF DOUGLAS A. DAWSON

ON BEHALF OF CORE COMMUNICATIONS, INC.

Dated: July 15, 2002

TABLE OF CONTENTS

Page

I. BACKGROUND OF THE WITNESS 1

II. SUMMARY OF THE TESTIMONY 5

III. INTERCONNECTION ISSUES 8

A. Technical Feasibility 9

B. The Policy of Sharing Facilities 13

C. Reasonable Time Frames 17

D. CPN Issues 24

IV. DARK FIBER ISSUES 25

A. Current Procedures Destined for Failure 27

B. Dark Fiber Technically Feasibility Issues 34

C. Continuous Path Issue 39

IV. CONCLUSION 42

I. BACKGROUND OF THE WITNESS

Q. Please state your name, company and business address.

A. My name is Douglas A. Dawson. I am both a founder and an owner of CCG Consulting, Inc. ("CCG"), located at 6811 Kenilworth Avenue, Suite 300, Riverdale, Maryland, 20737.

Q. On whose behalf are your submitting this testimony?

A. I am submitting this testimony on behalf of CoreTel Communications, Inc. ("CoreTel"), a competitive local exchange carrier ("CLEC") operating in Maryland.

Q. What is your educational background?

A. I received a Bachelor of Science in Accounting from the University of Maryland in 1977. In addition, I received a Masters degree in Mathematics from the University of California at Berkeley in 1985.

Q. What is your business background?

A. Prior to founding CCG, my most recent job was as the Staff Director of Special Studies at John Stauralakis, Inc. ("JSI") of Seabrook, Maryland. In that capacity, I

oversaw all projects that were not historically part of JSI's core telephone separations business. I worked to assist clients on such projects as the analysis and implementation of becoming a toll reseller; the development of optional toll and local calling plans; studying and implementing traditional EAS and Measured EAS plans; conducting feasibility studies associated with the implementation of new Internet subsidiaries; performing embedded, TELRIC, and incremental cost studies for products and services; assisting in local rate case preparation and defense; development of lease rates for sales to affiliates and non-affiliates; conducting cross-subsidy studies determining the embedded overlap between telephone services; and preparation of analyses concerning the potential impact of competition on rural ILECs.

Before serving as Staff Director of Special Studies at JSI, I worked at JSI as a manager in the Separations Department. In that capacity, I supervised and performed Part 36/69 toll cost studies, prepared a large number of separations studies, calculated the access charge rates for Interstate and State access charge tariffs, and re-wrote the JSI Part 36/69 allocator into a Windows-based spreadsheet. I also taught a number of classes in Part 32 accounting practices, telephone separations, and budgeting and planning.

Before serving as a manager in the Separations Department at JSI, I had operational experience in various job titles for CP National in Concord, California. My final position there was as Director of Revenues, and in that

capacity I oversaw a large group that performed telephone accounting, telephone separations and traffic studies for a seven-state area. My group also monitored earnings, maintained tariffs, filed rate cases, developed access and end-user tariff rates, and monitored and commented in state and federal regulatory proceedings. I testified in a number of rate cases and regulatory proceedings in California, Nevada, Oregon and New Mexico. While at CP National, I was also responsible for earnings monitoring and rate case development for electric, gas and water properties.

Before joining CP National, I worked as Staff Manager in Industry Relations at Southwestern Bell in St. Louis, Missouri. My functions there included tracking issues that impacted Bell's relationships with the independent telephone industry, calculating and negotiating various interconnection and settlement rates between companies for EAS and other arrangements, and overseeing the review of an independent telephone company's traffic and toll cost studies. I also served a stint as a member of the rate case team for the Missouri operations.

Before joining CP National, I began my career at John Stauralakis, Inc. performing Part 67 separations studies.

Q. What is your specific role at CCG?

A. I am a founder and owner and have the title of Chief Technical Officer. I am in charge of the CLEC implementation team. In that capacity, I have direct responsibility for the business planning, regulatory and engineering groups and products within our company. I personally conduct all of the accounting development and advisory work for clients, I directly assist companies to plan the best strategic path for future growth, and I am in charge of all of the costing and pricing work that CCG performs. CCG consults to over 250 CLECs nationwide and we have gained broad industry knowledge of how CLECs function in the real world.

Q. Please describe how your experience is relevant to the facts in this case.

A. One of the functions I perform at the company is to negotiate interconnection agreements on behalf of clients. Once clients have obtained interconnection I work with them to implement their desired network. In that role I have negotiated many interconnection arrangements with all of the RBOCs, have attended numerous engineering meetings, and have seen many networks through to completion. Further, I have three staff members who also perform this role and we are almost constantly at various stages of network implementation with various clients. I work with my staff to keep our firm abreast of the various changes in interconnection agreements and in implementation policies. One would think that after five years of active competition that issues associated with interconnection would have stabilized, but the RBOCs and CLECs are in a constant dance to gain

advantage over each other and the language and nuances of interconnection shift constantly. In addition to working with the RBOCs we have worked to interconnect with smaller players like ALLTEL, Citizens Utilities, Century, the old GTE and Sprint. Since 1997 I have probably been involved directly or as an advisor to my staff in as many different interconnection negotiations as anybody on the CLEC side of the fence.

II. SUMMARY OF THE TESTIMONY

Q. What is the purpose of your testimony?

A. The purpose of this testimony is to intervene on behalf of CoreTel in Verizon's 271 filing before this Commission. As this Commission is aware, CoreTel has experienced a number of problems with Verizon in launching and operating the CLEC and we thought it was important to remind the Commission that we don't believe that Verizon has take their competitive responsibilities seriously.

Q. What are the basic issues that CoreTel wants the Commission to consider in the 271 proceeding?

A. Verizon has hindered CoreTel in many ways and has harmed CoreTel in its attempts to provide competitive services in Maryland. As CoreTel understands it, one of Verizon's most important hurdles to getting 271 authority is in proving that they have operated in such a way as to have fostered competition in the State.

CoreTel does not believe that Verizon has acted in good faith with competitors and we want to list those problems we have had in the past with Verizon and show that most of our issues are unresolved and are still ongoing problems.

Q. What are the major issues that CoreTel would like to bring to the Commission's attention?

A. Our issues fall into several broad categories. First are issues that can be characterized as Interconnection issues, which fall under checklist item 1. Next we have some issues with the dark fiber UNE offered by Verizon, which fall under checklist items 2, 4, and 5.

Q. Can you summarize CoreTel's Interconnection issues with Verizon?

A. Yes. I believe Verizon has violated Item 1 of the 271 Checklist. That Checklist item states that Verizon must provide nondiscriminatory interconnection at any technically feasible point. Further, that interconnection should be at least equal in quality to that provided to itself. CoreTel's interconnection issues have been presented to the Commission earlier in Case No. 8881 that is still pending before the Commission. In that case CoreTel demonstrated that Verizon has refused to use existing, technically feasible facilities to interconnect with CoreTel. This originally occurred in Baltimore and very recently has occurred again in Salisbury, MD. CoreTel also believes that Verizon took excessive time to effectuate several

interconnections for CoreTel. In addition, Verizon refuses to pass Calling Party Number ("CPN") (which is essentially the calling parties telephone number, similar to caller ID).

Q. Can you summarize CoreTel's Dark Fiber UNE issues with Verizon?

A. Yes. I believe Verizon fails to provide nondiscriminatory access at technically feasible points to dark fiber UNEs in violation of checklist items 2, 4, and 5. As discussed below, Verizon's current dark fiber offering is essentially worthless to CLECs for several reasons. First, Verizon will not tell CLECs where available dark fiber exists, even though reasonable access to such information is critical for network buildout determinations. Second, Verizon unlawfully limits the ability of CLECs to access dark fiber, by limiting the available access points and by making CLECs collocate in order to access dark fiber and to combine "noncontinuous" dark fiber.

Q. What is CoreTel's basic business plan?

A. CoreTel, for the most part, delivers data services that are not available from Verizon. For example, one of CoreTel's most successful products is a 100-megabyte Ethernet connection for companies that require large amounts of bandwidth. This is a product that is not available from Verizon. CoreTel also offers managed modem products for Internet Service Providers that differ

substantially both in price and performance from the products that Verizon offers to ISPs.

III. INTERCONNECTION ISSUES

Q. Can you summarize the main interconnection issues?

A. Yes. CoreTel basically wished to utilize existing Verizon multiplexers to interconnect with Verizon. These multiplexers were already in the network providing service to Verizon customers. In the end, Verizon rejected CoreTel's request to use existing multiplexers on the grounds that it would force Verizon to mix retail and wholesale services. I will demonstrate that what CoreTel was seeking was both technically feasible and practical. I believe Verizon's policy that does not allow the sharing of retail and wholesale hardware in the field to be capricious and inefficient. CoreTel's other main Interconnection issue is that Verizon took too long to effectuate interconnection. This can be best demonstrated by comparing the time frames experienced by CoreTel and other CLECs to the time frames that are routinely achieved by large retail customers and other types of carriers. I think it worthy to note that this is an ongoing practice of Verizon and problem for CoreTel. Indeed, Verizon refused to provide CoreTel interconnection at an existing facility in on grounds that it is classified as "retail" as recently as June 2002.

A. Technical Feasibility

Q. The major Interconnection issue with Verizon has been the technical feasibility of the interconnection requested by CoreTel. Can you explain what CoreTel was trying to do?

A. Yes. CoreTel wanted to establish interconnection using the entrance facility option for connecting with Verizon. With the entrance facility method, either Verizon or the CLEC either constructs a facility for traffic running from/to the CLEC network to the Verizon network. Verizon is responsible for delivering its customers' traffic to the CoreTel network, and CoreTel is responsible for delivering its customers' traffic to the Verizon network.

CoreTel initially planned to interconnect at three different Verizon tandems – Baltimore in LATA 238, Mt. Airy in LATA 240 and Easton in LATA 242. In each of the three LATAs CoreTel was able to find suitable locations for its own network equipment. Since CoreTel elected to use an entrance facility interconnection, CoreTel was required to obtain transport from its chosen network locations to the Verizon tandems. There was an existing OC-12 fiber optic multiplexer at CoreTel's Baltimore location and an OC-3 fiber optic multiplexer at CoreTel's Mt. Airy location. CoreTel wanted Verizon to use these existing multiplexers to establish entrance facilities from Verizon's network to CoreTel's network. Verizon informed CoreTel that these existing facilities could not be used

for Interconnection because they were classified as "retail" facilities, rather than "wholesale" facilities. I will discuss the issues surrounding this classification below in another section of the testimony.

Q. Was it possible for Verizon to use the existing facilities to serve CoreTel?

A. Yes. In both locations there was spare capacity on the existing systems. Let me discuss what spare capacity means in this case. First let's look at the Baltimore location where there was an existing OC-12 multiplexer. An OC-12 multiplexer represents a tremendous amount of bandwidth with 622.08 Mbps of throughput and can be represented as the ability to supply 4 OC-3s, or 12 DS3s, or 336 T1s or 8,064 individual trunks. Typically, Verizon prefers to use and reserve bandwidth at such facilities in blocks for specific customers, meaning they prefer to keep the trunks for each large customer grouped together and separated from those of other customers. In order to maintain customer grouping, with such a large device as this OC-12 multiplexer Verizon would typically assign blocks of capacity to large customers at the OC3 or DS3 level. Verizon would typically allocate and reserve that amount of bandwidth even if the customer didn't have plans to use it all.

CoreTel was looking to start with less than an OC-3 worth of bandwidth in Baltimore. Verizon engineers had characterized the existing device to CoreTel as nearly unused, so I assume that it had set aside blocks for existing service on one OC-3 or less. This means that the device had at least 3 additional OC-3 blocks

available for CoreTel or for other customers. An OC-12 multiplexer is a rather rare device, because of its cost to see in the field at the retail level and one normally associates such a large device with carrier grade service because of its size and cost. There are very few retail end-user sites anywhere in Maryland that would require an OC-12 worth of bandwidth at one location. However, since the device existed, I think it was perfectly logical for CoreTel to want to use the existing device to expedite completion of the network.

Q. So your conclusion is that it was technically feasibility for CoreTel to use the existing facilities?

A. Yes. Spare capacity clearly existed. The sorts of trunks that CoreTel wanted Verizon to provision over the existing systems are the sorts of traffic that such multiplexers are designed to provide. There are no issues, from a technical standpoint, of CoreTel being considered a carrier while these devices were slated for retail use. Essentially a T1 is a T1 whether it is used for carrier grade service or customer grade service. Thus, I conclude that there was plenty of capacity and that CoreTel's planned bandwidth was clearly of a type that the existing devices were designed to handle. I also point out that with the large amount of space capacity on this particular multiplexer, it would be simple for Verizon to segregate CoreTel traffic from the traffic of the existing customers.

The only technical issue that I can imagine is one of routing. This issue would involve whether the existing device was routed to the same location where CoreTel needed to terminate. Historically, with older technologies, this was a very relevant question because in the past most high-capacity circuits were routed through the network on a dedicated point-to-point basis. In such a point-to-point architecture, a device like the one at the Baltimore location would have routed to one, and only one other location. However, the device at CoreTel's Baltimore location is routed onto a SONET fiber ring that connects to a number of locations in the Verizon network. Once on a SONET ring it is not necessary for all of the traffic on the OC-12 to terminate at the same Verizon node on the ring. For example, consider an OC-12 that is comprised of 4 OC-3s. With modern SONET technology, each of these OC-3s can terminate at a different Verizon location on the SONET ring. In CoreTel's case we suspect that this is not even an issue since the existing traffic on the OC-12 and CoreTel's planned traffic were probably both to be routed to the same tandem in Baltimore. Further, Verizon never raised any issues to suggest that the existing system did not route to the right locations. However, even if this was the case, the Verizon SONET network could handle routing different segments of the traffic to different locations that were part of the SONET ring.

In the end, with modern electronics, routing is more a matter of programming the electronics than it is of tracing the path of physical fibers. There is no technical reason that I can think of that would stop Verizon from mixing a carrier OC-3 and

a retail OC-3 on the same fiber. There is absolutely no issue that CoreTel's traffic would have somehow become "mingled" with other "retail" traffic on the OC-12 device. Modern electronics simply don't work that way. There was probably a time in the past when there were technical reasons for Verizon to have this prohibition of mixing retail and wholesale traffic. However, with modern electronics there is no functional reason that Verizon can suggest for not letting CoreTel use this existing facility, other than the mysterious "rule" that forbade it.

Q. Is your conclusion then that what CoreTel wanted to do was technically feasible?

A. Yes. Not only was it technically feasible, it was practically feasible. The device existed and had the spare capacity to fulfill CoreTel's requirements.

B. The Policy of Sharing Facilities

Q. One of the biggest disputed issues between the two parties is the unwillingness of Verizon to allow CoreTel, as a carrier, to share existing "retail" facilities. Can you elaborate on this issue?

A. Yes. I have alluded to this issue in the previous discussion. Verizon has a preference for segregating different classes of facilities. Before the advent of CLECs, the other carriers that Verizon had to deal with consisted mostly of

interexchange carriers (IXCs) and wireless providers. Most such traditional carriers interconnected into the Verizon network at a few well-defined locations. The traffic from such carriers was usually aggregated by the carriers and then handed to Verizon at a few locations. This made it very easy for Verizon to declare such handoff points to be "wholesale" connections.

I think Verizon probably created the distinction between wholesale and retail traffic in order to align its workforce with its customer base. For example, Verizon could dedicate employees specifically to work with the carriers since these carriers would appear in the network at just a few nodes on the network. However, the Telecommunications Act gave CLECs some new rights that did not always align perfectly with Verizon's historic workforce separation between wholesale and retail. For example, CLECs are allowed to connect with Verizon at any technically feasible location. The Act did not put any modifiers on this requirement to say at any technically feasible points "that are convenient for Verizon".

Q. Are you saying that the carrier versus retail distinction is somewhat obsolete?

A. Yes. With modern electronics and smart routing there is no reason that I can think of why an OC-12 at a network node can't share OC-3s or even DS3s from both retail and wholesale carrier customers. In the end, all that matters is that each type

of traffic ends up at the right ultimate terminating location in the Verizon tandem. Requiring the entire network to maintain this same separation no longer makes sense. In the modern tandem office, splitting traffic and delivering it to the right part of the tandem is easily achievable. In the end, the facilities that CoreTel wanted to use were technically feasible and Verizon should have moved forward with the interconnection request made by CoreTel.

Q. Did the FCC foresee new network arrangements in the 1996 Telecommunications Act?

A. I believe they did. The FCC foresaw that new CLECs would be making new requests on the RBOCs that were different than the ways the RBOCs had interconnected with other carriers in the past. In enacting the Act, there was lengthy discussion from the FCC on the topic of how and where a CLEC could interconnect with an RBOC and this led the FCC to adopt a basic right for CLECs to interconnect with the RBOC at any "technically feasible point". There was no mention, or even contemplation in the Act that the RBOCs could interpret this mandate in such a way as to require "separate but equal" new facilities for local interconnection. That is what the Verizon policy amounts to – they have set aside all existing field facilities by declaring them to be "retail". The practical result of doing this means that a CLEC must wait for the slow construction of new facilities, even when existing facilities already exist that would meet the CLEC's purpose. In CoreTel's case, Verizon's proposed solution was to place a new

"carrier" grade terminal right next to the old "retail" one that happened to be mostly empty. Thus, to me, Verizon's policy seems designed to delay CLECs and at the same time is very wasteful. All of the ratepayers of Maryland will ultimately pay for the investment in two mostly empty multiplexers that were constructed at one location. As one who has negotiated numerous interconnections I have seen a constantly shifting series of Verizon excuses and policies that seem like nothing more than pure excuses to make interconnection as difficult as possible. This particular policy is just one more policy that seems to serve no purpose but to slow CLECs from getting into business.

Q. Isn't what CoreTel requested the most efficient and cost effective way to interconnect with Verizon?

A. Yes. In CoreTel's case there was an existing multiplexer at two of the three initial locations where they requested interconnection. If Verizon had used the existing multiplexer, then CoreTel's interconnection request would have been processed immediately and Verizon would not have had to purchase new and wasteful hardware at these locations. What Verizon suggested as a solution for CoreTel – building a new multiplexer at each location, not only took a long time, but it cost Verizon, and ultimately the ratepayers in Maryland, a great deal of money for no apparent reason other than Verizon's CLEC "policy". As the Commission is well aware, allowing Verizon to install unneeded equipment in the network will eventually be reflected in Verizon asking for increased local rates. There seems to

be no reason to allow Verizon to adopt the separate but equal policy for CLECs when the ultimate result is a less efficient and more costly network.

C. Reasonable Time Frames

Q. At the forefront of the interconnection issue of the amount of time that Verizon takes to build the interconnection facilities. Do you have any comments concerning Verizon's time frame?

A. Yes. There are two issues concerning timing that I want to explore. First, I'd like to compare the time that it takes for Verizon to turn up new CLEC trunks to the amount of time it takes them to turn up equivalent facilities for other classes of customers. Next I'd like to discuss the difference between the time frame required to turn up of a CLEC's initial network and timeframes for subsequently augmenting and growing an existing network.

Q, Does Verizon treat all customers the same when it comes to turning up new services?

A. No they don't, and I think that gets to the heart of the matter in the CoreTel complaint. Lets look at a large retail customer who already has service from Verizon. Let's assume that this retail customer is one of sufficient size that Verizon has already installed a field multiplexer like the OC-3 or OC-12

multiplexers that existed at the planned CoreTel locations. What time frames would such a customer expect if they requested that additional circuits be installed on the existing multiplexer?

Years ago, before the Act, such a customer might have had a substantial wait for new service from Verizon. Installation dates have always been a bone of contention between retail customers and Verizon. However, most installation complaints come from those circumstances where new facilities must be built to meet the customer requirements. In this example we are looking at a situation where the field equipment already exists. I don't want to oversimplify such an installation, but this is of the type of installation that can be categorized in the category of "flipping a switch" to turn up new service. The field hardware already exists, the path between the Verizon tandem and that field hardware is fully defined. Turning up such a new circuit requires little more than creating the paperwork records necessary to document the service and of activating the pre-existing electronic path – flipping the switch.

I know of a number of examples where Verizon has installed new T1s or DS3s at the retail location in less than 30 days. I am sure that most such quick installations are of the type described here where the facilities between Verizon and the customer were already in place. I have seen a big shift in the way that Verizon treats its largest retail customers since 1996. Competition with CLECs has forced

Verizon to compete for the large customers and they have gotten faster and better in serving them.

Another large class of customers are the carriers, such as IXCs or wireless providers. It is a very typical situation in a carrier environment to pre-configure a large facility such as an OC-3 or OC-12 multiplexer for the very reason that Verizon can turn up circuits quickly should the need arrive. It is not unusual, when facilities are already in place, for carriers to get circuits in 30 days.

Q. If Verizon can turn up service for a retail customer or a carrier this quickly, is there any reason why they can't do this for a CLEC as well?

A. No. My answer is obviously that Verizon could turn up the CLEC quickly if Verizon wanted to do so. Again, let me reiterate that the circuits sold for retail and for wholesale CLEC provisioning are for practical purposes identical. If anything, retail circuits are sometimes more complex than wholesale interconnection circuits. Retail customers often have unusual hardware connection issues or unique signaling requirements while interconnection trunks tend to be about as vanilla as circuits can be.

In CoreTel's specific case, at the two locations where existing multiplexers existed, Verizon could have effectuated the desired circuits in a short period of time. Their failure to do so constitutes a lack of willingness to treat a CLEC in the

same manner they would treat a large retail customer or even another carrier like an IXC or a CMRS (*i.e.*, wireless) carrier. I think this unwillingness is at the CoreTel of why Verizon is not ready to be granted 271 authority in Maryland. They have repeatedly demonstrated a willingness to inflict delays upon CLECs. I personally believe that Verizon has established intentionally cumbersome to slow the CLEC process, but I expect that intent will never be provable. However, I don't think we need written proof of such a policy – the fact that CLEC implementations are routinely delayed is proof enough.

This particular issue really highlights the way that CLECs are treated differently than other large Verizon customers. Large retail customers tend to get the best service that Verizon has to offer (under the threat of taking their business elsewhere should Verizon fail to deliver). In order to respond to the needs of large customers, Verizon has undoubtedly created an internal workflow and paperwork process that allows them to handle large customers in an efficient way. However, Verizon doesn't handle CLECs in the same manner as they do large retail customers. Indeed, to satisfy its nondiscrimination obligations to CLECs, Verizon seeks to provide "separate but equal" treatment to CLECs, which, not surprisingly, results in results in discriminatory treatment to CLECs.

For example, Verizon has created a new department to deal with CLECs. All CLEC interface with Verizon must pass through this CLEC department and this is the CLEC's only point of contact with Verizon. Is this separate treatment

necessarily bad? Perhaps not theoretically. But in actual practice, CLECs experience delays and problems that are not faced by Verizon's large retail customers or other carriers. The new CLEC department at Verizon seems to be in a state of constant turmoil with high employee churn and with many inexperienced account representatives being assigned to CLECs. In practical terms, the CLEC department is often a bottleneck for a CLEC and is one reason why CLECs don't receive service of the same quality as that provided to large retail customers and to carriers.

Another reason for the inferior service that CLECs receive from Verizon is the seemingly never-ending creation of policies that are unique for CLECs. The primary example I am discussing in this testimony - the unwillingness of Verizon to share a "retail" facility with a CLEC - is just one example of a CLEC-only policy. These polices are unwritten and capricious. There is no way for a CLEC to know that such policies exist, and these policies are usually sprung on CLECs in the midst of trying to accomplish interconnection. In this case, CoreTel had an interconnection agreement that allowed for interconnection at "any technically feasible" point. However, after ordering interconnection this new Verizon policy surfaced that seems to have pre-empted Verizon's Act obligations. Time and again I have seen such mystifying new policies created out of thin air in the midst of a CLEC trying to implement a network. The end result of these surprise policies has always been delays in network implementation.

My bottom line observation is that CLECs don't get service of the same quality of as that afforded to other existing carriers and large retail customers. This clearly defies the intention of the 1996 Telecommunications Act where the FCC clearly stated that CLECs were not to be discriminated against by Verizon.

Q. Is there a distinction between the time required by Verizon to implement a new order for service and the time orders take as part of the ongoing planning and forecasting process. Can you elaborate?

A. Yes. I want to make sure that we keep these two circumstances clearly separated. The first situation is the one that was facing CoreTel – trying to establish the initial interconnection with Verizon in order to get into business. This is a critical to the success of a CLEC and time is usually of the essence to a startup CLEC like CoreTel. Until the network is up and running, a CLEC can't interchange traffic with Verizon, can't sell to customers and ultimately can't get any revenues. The inability to get trunks connected to Verizon will stop a CLEC dead in their tracks. As the Commission is aware, very few CLECs have sufficient funding to wait out Verizon's delaying tactics. Time is money, and most CLECs, like CoreTel, have sufficient funds to get into business, but don't have unlimited funds to wait out endless delays. Verizon knows this and I have always thought they have displayed what I have considered passive aggressive behavior with start-up CLECs. They are friendly enough in discussions, but they seem to constantly spring new reasons for delays in the initial interconnection with their network. I

honestly believe, after having worked with dozens of Verizon interconnections, that they delay CLECs purposefully.

Let's look at CoreTel's request again. CoreTel sought interconnection at a location where a transport path and multiplexing equipment already existed. It makes no sense to me that Verizon should be able to take more time to turn up these trunks than they would for a retail customer who was at that same pre-existing facility. Forgetting about the paperwork trail, from a practical engineering perspective a Verizon technician could effect turning up such trunks in a very short period of time. I think Verizon must be held to a standard whereby new interconnections are effectuated with all possible haste, within the bounds of common sense. What CoreTel requested and expected was both practical and reasonable. For Verizon to say that CoreTel had unreasonable expectations is to hide behind paperwork and excuses. The fact is Verizon could easily have done what CoreTel requested had the wanted to do so. I fully believe that they have an internal policy of delaying interconnection so that they can slow competitors from getting into business. They have seen CLECs come and go, and any little nudge they can give to a CLEC might contribute to them never showing up or of running out of funding. This is not what the FCC expected as an RBOC reaction to the Act, and it is not what this Commission should accept.

Q. Is this Verizon practice ongoing?

A. Yes. Verizon seems wholly committed to this discriminatory practice. As I noted above, Verizon informed CoreTel as recently as June 2002 that it would not use an existing "retail" facility to interconnect with CoreTel in Salisbury, Maryland.

D. CPN Issues

Q. CoreTel also has an issue with Verizon concerning CPN. Can you describe the issue?

A. Yes. CoreTel currently has MF (Multifrequency) trunks between it and Verizon. MF trunks are an older technology that has existed for many years, and are still being deployed by Verizon to long distance carriers, like AT&T. This was the major type of trunking that was in place before the advent of the SS7 network.

CoreTel's issue is that Verizon is refusing the transmit CPN information over the MF trunks. Verizon claims that CoreTel either needs to order IXC trunks (again, retail facilities) or establish SS7 trunking in order for Verizon to pass CPN.

Q. Why is this an issue for CoreTel?

A. CoreTel would like to use CPN to route certain types of data traffic for its end users. There is simply no reason for Verizon to refuse to pass this information to

CoreTel. Since Verizon won't supply CPN to CoreTel, CoreTel ends up with a diminished customer product.

Q. Is it technically feasible for Verizon to supply CPN over the MF trunks?

A. Yes. As I noted above, Verizon currently provides CPN to IXCs. I am mystified by Verizon's refusal to offer CPN. The Act clearly requires Verizon to offer nondiscriminatory service to CLECs. Because Verizon is capable of supplying the CPN and because they offer in other instances over the same type of trunking, they should be supplying it to CoreTel.

Q. Has CoreTel made this complaint to the Commission?

A. Not yet. However, since we have reached an impasse with Verizon we probably may have to do so. CoreTel finds it frustrating to keep having to bother the Commission with issues that ought to be routine, especially when Verizon passes this information to IXCs over MF trunks. We include in this 271 proceeding to point out to the Commission that our frustrations with Verizon seem to be never-ending. We have grown accustomed to getting no as the answer to anything we ask for from Verizon. We wish it were otherwise.

IV. DARK FIBER ISSUES

Q. CoreTel also has a number of issues related to dark fiber. Can you summarize the issues?

A. Yes. CoreTel has filed a petition for dispute resolution against Verizon concerning these issues that is ongoing at the Commission in Case No. 8910. There are a number of specific issues that can be summarized by saying that Verizon is offering the dark fiber UNE in such a way as to make it impractical for a CLEC to use. Specifically, some of the issues include Verizon's refusal to identify where dark fiber exists or to elaborate on the procedures it uses to define dark fiber, Verizon's refusal to allow dark fiber connection at any technically feasible location, and Verizon's requirement that CLECs collocate in order to combine multiple dark fiber UNEs. In the end, CoreTel believes that Verizon has created a set of rules concerning dark fiber UNEs that makes it practically useless as a CLEC tool. This violates checklist items 2, 4 and 5, and is further evidence that Verizon has not taken competition seriously in Maryland.

Q. How do Verizon's dark fiber policies affect CoreTel and other CLECs?

A. The FCC created the dark fiber UNE as a way to further promote competition. They recognized, rather early after the implementation of the Act that the various RBOCs had made transport a major hurdle for CLECs. The FCC then created the dark fiber UNE as an additional transport tool for CLECs to effectuate interconnection and to overcome transport issues. However, in the practical

application of the dark fiber UNE, Verizon and the other RBOCs have made it virtually unusable as a wholesale product. The Verizon procedures for ordering dark fiber are almost automatically doomed to failure. The proof of this is that is practically no dark fiber UNEs in use by CLECs anywhere in the US. Indeed, I believe Verizon's filing in this proceeding suggests that Verizon has provided only two dark fiber UNEs in Maryland to date. Below I will describe the Verizon dark fiber policies and describe the steps that would be needed to make the dark fiber UNE a reality for CLECs, as intended by the FCC and the Act.

The inability to order dark fiber harms CoreTel. As I noted above, CoreTel offers a set of non-traditional products. CoreTel's preference is to operate a network on a pure Ethernet basis, and CoreTel is settling for an inferior alternative when they accept Verizon's standard SONET bandwidth offerings. CoreTel is willing to make the investment in the fiber electronics necessary to provide the service its customer's desire. The FCC created the dark fiber UNE just for CLECs like CoreTel. The dark fiber UNE requires a substantial investment from CLECs in electronics and the FCC has always looked for ways to encourage CLECs to make permanent network investments. The FCC has reasoned that such investments make for permanent competition. The inability of CoreTel to obtain dark fiber means that it is operating less efficiently than it would desire. It also means that CoreTel is often unable to deliver the services that its customers desire.

A. Current Procedures Destined for Failure

Q. You said that the current dark fiber rules that govern the use of the dark fiber UNE by Verizon are doomed to failure. Can you elaborate?

A. Yes. After the FCC ordered the creation of the dark fiber UNE Verizon established a procedure for CLECs to use when ordering dark fiber. These rules simply cannot work. CoreTel and Verizon are at an impasses since Verizon refused to accept any of CoreTel's ideas, and the topic is now at the Commission as part of Case No. 8910.

Basically, the Verizon rules make it virtually impossible for a CLEC to plan and create a network that relies on any dark fiber UNE. First, Verizon will not publish a list of where dark fiber exists. Instead, they require that CLECs ask for dark fiber, on a route-by-route basis. Verizon then determines whether dark fiber is available on the route (or to quickly determine that they want to keep it all reserved for future use). Verizon does not have any stated formula or procedure for defining dark fiber. This means that they are able to determine, again on a route-by-route basis, if they have any dark fiber available. I believe that Verizon does not want to lease dark fiber to CLECs and this ordering process makes it easy for them to declare that no dark fiber is available for any route that a CLEC happens to be interested in.

Q. Are you implying that Verizon is not being honest when it says there is no dark fiber available on a given route?

A. I can't say that for sure, although I suspect it is the case. I do note that it is easy and painless for Verizon to provide dark fiber (and information related to the location of such fiber) – which is exactly why we need a better solution. What I do believe is that the current dark fiber rules are so undefined that is very easy for Verizon to say no to most dark fiber orders. This does not mean that dark fiber does not exist that could satisfy a CLEC's request. It is very convenient for Verizon to declare that a given route has no dark fiber because there are no defined rules to determine exactly what dark fiber is and if it exists on a given route. As it turns out, when Verizon declares a given route has no dark fiber that this usually kills the CLEC's request from a practical standpoint. Again, since timing and speed to installation is almost always an issue for a CLEC, then getting a negative answer to a dark fiber request means the CLEC runs out of time and options for using the dark fiber. Even if the CLEC were to challenge Verizon on each negative response, by the time the dark fiber was finally allowed there is a high likelihood that the CLEC would no longer need it for the specific solution they were seeking. Verizon has every motivation to make it difficult to get dark fiber, since delaying means that requests evaporate.

Q. Can you explain in more detail why Verizon's procedure won't work for CoreTel or other CLECs?

A. Yes. Dark fiber is normally just one component of creating a network. Typically a CLEC like CoreTel decides to create a new leg of a network based upon trying to meet the requirements of a specific customer. Most CLECs today have ditched the philosophy of "build it and they will come" and instead build only to serve specific customers who want to use their services. Because CoreTel usually has a specific customer in mind when it wants to expand the network, time becomes an important element in any solution that CoreTel wants to implement. If CoreTel can't effectuate a solution in a reasonable amount of time, then the customer involved will look elsewhere for a solution and CoreTel will no longer need the new portion of network, including the dark fiber UNE.

What this means is that in order for a dark fiber UNE to be usable, the procedure for obtaining dark fiber must be clearly defined and have some reasonable chance of timely success. Verizon's current process is a black hole in that the rules are unclear and in that a CLEC has no idea if there is any chance of success when ordering dark fiber.

It is important to understand that dark fiber is usually only one component of a solution for a specific customer. The dark fiber UNE might allow CoreTel to get a high-capacity loop to the customer or else supply a portion of the network needed to fulfill the customer's requirements. Rarely would I expect that dark fiber would be the total solution for a customer's needs. Since dark fiber is just a piece of the

687 solution, CoreTel's engineers need to know early in the planning process if dark
688 fiber is going to be part of the proposed final solution for a customer.
689
690 This is why CoreTel thinks that it is essential for Verizon to do two things they
691 aren't currently doing. First, Verizon should establish and publish the rules it uses
692 to define dark fiber. Any such definition needs to define very clearly how Verizon
693 reserves fiber pairs to account for future growth and for spare capacity on any
694 given fiber route. Absent such specific rules, it is far too easy for Verizon to
695 declare that any route that a CLEC wants happens to have no spare dark fiber
696 capacity. Without defined rules, Verizon is able to define the rules on a route-by-
697 route basis and keep dark fiber away from CLECs.
698
699 The second step that we think is necessary to keep Verizon honest is to require
700 that they periodically publish a list of routes that contain dark fiber, based upon
701 the dark fiber definition mentioned above. In testimony already filed, Verizon
702 says that publishing an inventory of dark fiber would be too difficult. However,
703 there are ways to publish such a list without creating difficulties for Verizon. For
704 example, they could publish a list periodically, say every six months or a year.
705 We don't see that it is necessary that they keep such a list totally updated at all
706 times – it's more important to CoreTel that they be given some indication where
707 dark fiber exists. We don't think that the overall amount of dark fiber in the
708 Verizon system changes rapidly, and a periodic list should be sufficient to assist
709 CLECs in network planning. We understand that things change in the network

and that sometimes that some fiber that was thought to be spare might suddenly find a use. However, we know that scattered throughout the Verizon system is a tremendous amount of dark fiber. There are a number of reasons for dark fiber to exist that I won't elaborate here, but it exists in every fiber network ever built. The FCC has required ILECs to maintain similar availability information for items such as collocation space, and there is simply no reason why similar information could not be made available for dark fiber.

Absent these two requirements for Verizon, we don't believe that CoreTel or any other CLEC will ever have much luck in realistically using dark fiber. The current Verizon process is unworkable – as evidenced by the *de minimis* number of dark fiber UNEs provisioned in Maryland. The CLEC must submit requests for each route they are interested in and then wait until Verizon tells them if dark fiber is available. There are several problems with this process. First, it takes too long. By the time that Verizon gets back to the CLEC, the useful ability to use dark fiber is often gone. CLECs must find solutions for customers in a reasonable time or else the opportunities evaporate. It's the rare customer who will wait for a long time to get a solution. The more important problem is that there are often multiple ways that the Verizon network can connect two points. The CLEC can't be expected to understand the nuances of the Verizon network, and thus it is almost impossible for the CLEC to know what to even request from Verizon. For example, if a CLEC is looking to create a route from point A to B, Verizon may have several network options for getting between the two points with fiber.

I equate the current Verizon rules to the game of Battleship. In Battleship, a player must make repeated wild guesses as to the location of the enemy's ships. The CLEC must do the same thing in the current procedure with dark fiber. Without knowing how Verizon routes its fibers, where they have nodes and access points, where rings exist, etc., the CLEC must place requests that are nothing more than wild guesses as to where dark fiber might exist. If the CLEC guesses wrong then they can't get dark fiber. This doesn't mean that there isn't a dark fiber solution available, it just means that the specific request that the CLEC made won't work. There might be several alternatives that would supply the same solution, but the CLEC can never know this. However, if they knew more about the Verizon network they might have been able to create a solution, or part of a solution using the dark fiver UNE. As it works today, the process is heavily stacked against the CLEC for ever getting dark fiber in a reasonable time frame.

I think that the FCC requirement that created the dark fiber UNE automatically created a subsequent obligation for the RBOCs to create a workable methodology that would enable CLECs to use the new UNE. If not, then the FCC order has no teeth. The methodology proposed by Verizon does not work, which is clearly evidenced by the incredibly few instances where CLECs have been able to get dark fiber in Maryland and elsewhere. It has been my experience that most CLECs won't use any wholesale product where the RBOCs throw up a major barrier, and the RBOCs have relied on that reluctance to create barriers for new

UNE products like dark fiber and EELs. Verizon has argued that there isn't much demand for dark fiber and they claim the small number of dark fiber UNE orders is proof of this. I believe instead that the CLECs know that the current methodology is destined for futility and failure and that few CLECs are as willing as CoreTel to fight the regulatory battles needed to get what is rightfully theirs.

B. Dark Fiber Technically Feasibility Issues

Q. There are a number of technical issues at contention between Verizon and CoreTel concerning the practical use of dark fiber. Can you summarize these issues?

A. Yes. One of the important issues is the ability of a CLEC to order access to dark fiber UNEs at any "technically feasible" point. This issue raises the issue of where and how a CLEC can realistically gain access to a dark fiber UNE. Related to this issue is the issue of "combining" multiple dark fiber UNEs in order to create a usable path. I will discuss each of these issues in more detail below.

Q. One point of contention between CoreTel and Verizon is what constitutes a "technically feasible" interconnection point for obtaining dark fiber. Can you elaborate on this issue?

A. Yes. CoreTel believes Verizon's definition is too restrictive and does not follow the FCC and the 271 checklist requirement that CLECs be allowed to access to interconnection and UNEs at technically feasible points.

It will be useful to frame this discussion by describing how fiber networks are constructed and how various types of splices are created in the network. Splices come about in two ways. First, a splice is created where Verizon has to combine two pieces of raw fiber in order to make a continuous run. Since fiber is delivered on large reels, these sorts of splice points can end up almost anywhere in the network where a reel happens to end during construction. Sometimes these splice points are buried or on poles in the middle of nowhere -- wherever the construction crew happens to be when they are forced to change fiber reels or change the size of a cable. At this type of a splice point Verizon will have a splice box, which is a protective box covering the place where the two fibers had to be connected. This splice box is not usually large and is a sealed unit. This is not necessarily a place where Verizon would ever again tap into the fiber, and in fact in some ways it is a weak point in the network. This box may well be buried or otherwise inaccessible. CoreTel is not seeking to connect at these types of splice points.

The second type of splice in the network is a voluntary splice point. This is any location where Verizon has designed for future access to the fiber. Such splice points may be at major Verizon locations like a central office, or at large customer

801 locations. Such splice points are often also created at locations where the design
802 engineers expect there might be future need for a fiber spur, such at a potential
803 location for a future large business or housing development. These voluntary
804 splice points are thus at any junction in the network where Verizon has put
805 electronics or has designed the ability to easily put electronics in the future.
806
807 Verizon refers to points where electronics exist in the fiber network today as
808 "accessible terminals" and they believe that these are the only places where
809 CLECs should have access to the dark fiber UNE. However, in addition to
810 "accessible terminal" locations, a fiber network will contain other planned and
811 functional splice points. These are locations where easy access to the fiber has
812 been designed and created so that the fiber can easily be tapped at a later date. I
813 would like to refer to such locations as "designed access points". Such locations
814 don't necessarily have any current splices at them and the fiber may even pass
815 through these places uncut today. However, these locations have been built to
816 afford easy future access. There are a number of ways to design easy access to a
817 fiber and I expect that all of these various access methods can be found within the
818 Verizon network. One common type of hardware one might see at a designed
819 access point is a handhole. This is a small device that allows one to peer inside the
820 sheath and actually look at and work on the fiber pairs. This is the most common
821 type of access device built into most fiber networks. However, there might also be
822 designed access points in manholes, in field cabinets, at large customer sites and
823 other such places where the engineers have designed for future access to the fiber.

CoreTel believes that these "designed access points" are, by definition, locations where connection with the Verizon fiber network is technically feasible. These locations were designed specifically to allow easy access to the fiber in the future as needed. Verizon routinely taps into these designed access points as they expand the fiber network to meet customer demands.

The current dark fiber UNE procedures do not recognize designed access points as potential technically feasible locations for a CLEC to utilize on the network. Unfortunately, such designed access points are not going to be easy for a CLEC to know about. If the cable has never been cut or spliced at a specific handhole, then there probably won't be a CLLI code or any other easy record indicating that it even exists. Handholes are very routinely hidden inside of larger cabinets and such places that make it hard for the non-Verizon person to know they even exist. However, these designed access points are clearly technically feasible points of interconnection, because that is what they were designed to do – allow access at some future time.

Q. Is there a practical way that CLECs could use "designed access points" as you have defined them?

A. I believe there is. In addition to requiring Verizon to periodically publish a list of available dark fiber routes, I think it is necessary to require Verizon to allow

meetings with their engineers to look at the details of potential dark fiber routes. In such an engineering meeting a CLEC might find that there exists technically feasible designed access points that would otherwise be unknown for them. The current methodology of requiring CLECs to submit written requests for specific point-to-point connections will never take the place of such engineering meetings where the engineers on both sides could discuss the fiber route in enough detail to make the dark fiber UNE practical.

Q. What about Verizon's contention that dark fiber UNEs can only be ordered where electronics exist today?

A. I think it is clear that Verizon's definition of technically feasible connection point is too narrow. I believe that CoreTel's definition of "designed access point" is more in line with the intent of the Act. Such points are, by definition, technically feasible for interconnection because they were designed for just that purpose. CoreTel should be able to connect to dark fiber at a handhole, a basement, a hut where the fiber has clearly been designed for easy access – and the existence, or non-existence of current Verizon electronics should have nothing to do with CoreTel's access. By definition each party will use the network in a different way, and CoreTel's most effective use of a dark fiber UNE should not be restricted by the way that the Verizon engineers have elected to access the lit pairs on the fiber. Dark and lit fiber pairs, by definition, have nothing to do with each other.

C. Continuous Path Issue

Q. In their papers in Case No 8910 Verizon has raised one additional technical issue – how CoreTel or other CLECs should be able to join various pieces of dark fiber together to create a continuous path. Can you elaborate on this issue?

A. Yes. Verizon has taken the position that CoreTel would need to collocate at any location where they want to connect two dark fiber UNEs. I believe this requirement is not always practical and want to demonstrate how such a requirement would be a barrier to effective competition.

This issue hails back to an issue I mentioned earlier – how a CLEC might create a usable path between two points. Let's look at a practical example. The attached diagram (*see* Tab A) shows an example of a situation where there are two different ways that a connection can be made between Point A and Point B. Path 1 is a direct fiber path that connects between the two locations. Ideally there would be dark fiber available on this path. However, let's suppose there isn't but that dark fiber exists on Path 2 that happens to connect through multiple Verizon locations between Point A and Point B.

Verizon says they would not complete the order for a dark fiber UNE on Path 2 unless there was a clear unbroken line of fiber completely between Points A and

B. Let me show why this makes no practical sense. First, accept my assumption that Path 2 can be created by using existing Verizon fiber - each of the legs on Path 2 is on Verizon fiber. However, Verizon may or may not have a continuous lit path on this route. Verizon might be lighting different legs of this route with different electronics and there may be no continuous Verizon fiber optics signal on Path 2. I don't believe that a lit Verizon path is a necessary precursor to allowing a CLEC to get dark fiber on Path 2. Let's further assume that at one or more places on Path two that the fiber is not physically connected. The fiber is present that can complete this path, but it doesn't happen to be spliced together.

How could the CLEC make a practical dark fiber circuit out of Path 2? As Verizon suggests, the CLEC could order a dark fiber UNE for each of the unbroken legs that make up Path 2. Verizon would then have the CLEC collocate at each place where the fiber is not connected in order for the CLEC to effectuate a fiber "jumper" or a very short splice needed to connect the ends of the different dark fiber UNEs?

Why isn't that practical? There are two reasons. First, looking this diagram one can see that two of the splice points are at handholes while one is at a customer location. There are many practical reasons why the CLEC might not be able to collocate at these sorts of locations. First, there is no need to mandate collocation to run a basic jumper cable. Second, handholes are small devices and they could easily be located at some place where the CLEC would be unable to obtain collocation space close enough to be effective. These handholes could be on a

pole, underground or located on property where the CLEC can't get access. In such cases collocation would be impossible and the dark fiber route could not be created by the CLEC. Also note that one of the splice points is at a customer location. This customer is not obligated to allow the CLEC to collocate there and probably would not do so.

Remember that the dark fiber UNE applies to any portion of the Verizon fiber network. It's easy to think of the dark fiber UNE in terms of normal carrier-to-carrier fiber routes where it is routine for carriers to collocate. However, as this route shows, many Verizon fiber routes are customer routes, and as such they can be routed to many locations where the CLEC may not have the same access as does Verizon as the incumbent.

Because the CLEC would often be unable to collocate in order to complete the connection between two pieces of fiber, then another solution must be found. A CLEC should be able to order (or self provision) a dark fiber jumper at those locations where two pieces of dark fiber are not "continuous". Such a connection should be priced out to reasonably compensate Verizon for performing the jumper work and I would expect such a jumper to have a high non-recurring cost.

In asking for this jumper is the CLEC asking for something that Verizon would never do for themselves? Of course not. In fact, in this same example Verizon might well have created such jumpers to create a lit circuit on Path 2 without

bothering to splice the unused dark fiber pairs (*see* Tab A). Whenever Verizon needs to join two pieces of fiber together in the field they obviously do so – there are no engineering or technical reasons why they wouldn't do so.

IV. CONCLUSION

Q. Does this conclude your testimony?

A. Yes.

DUPLICATE

BEFORE THE
MARYLAND PUBLIC SERVICE COMMISSION

In the Matter of the Review by the Commission Into Verizon Maryland Inc.'s Compliance with the Conditions Of 47 U.S.C. § 271(c)	* * * * *	Case No. 8921

PETITION TO STAY PROCEEDING PENDING RESOLUTION OF FORMAL COMPLAINT

Core Communications, Inc. ("Core"), through counsel, petitions the Commission to stay the above-captioned proceeding pending Commission resolution of disputes related to Verizon's interconnection practices and policies in Case 8881.

INTRODUCTION

A determination by the Commission in this proceeding regarding whether Verizon provides nondiscriminatory access to interconnection in accordance with section 251(c)(2) of the Communications Act ("Act") (*i.e.*, item one of the section 271 checklist) stands to unfairly prejudice Core's complaint against Verizon in Case 8881, which has been before the Commission for nearly three years. As demonstrated below, Core has made more than a *prima facie* showing in Case 8881 that Verizon's standard entrance facility interconnection practices discriminate against CLECs, such as Core. Indeed, in written testimony Staff has supported Core's view that Verizon's practices are discriminatory in violation of section 251(c)(2), and the Hearing Examiner in Case 8881 has stated that "it is probable ... that Verizon did not treat Core as it would have reasonably treated itself or a subsidiary."[1]

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[1] Hearing Examiner Division - Ruling on Interlocutory Motion, Case No. 8881, 21 (March 25, 2002) ("Interlocutory Order") (Attached hereto as Tab A).

Verizon has used every delay tactic possible to prevent resolution of Core's complaint in Case 8881, instead preferring to take its chances in the Commission's section 271 review. The reasons for this are fourfold. First, Verizon hopes that Core's issues will get obscured in a broad, plenary section 271 proceeding, where myriad carriers raise myriad issues. Second, Commission Staff lacks the resources to proffer testimony and litigate carefully each and every issue raised by competitors. Third, Verizon hopes to use its enormous resources to defeat Core through a war of attrition whereby Verizon simply spends Core to death in regulatory proceedings. Fourth, Verizon knows that it borders on the politically impossible for any Commission to hold up a section 271 proceeding. Indeed, the FCC has not rejected a section 271 application since 1998, and the political momentum without question is with the Bell companies in 271 proceedings.

The Commission should not let Verizon end-run the formal complaint process through the section 271 proceeding. As elaborated further below, Core has done the work in Case 8881 to demonstrate that Verizon's standard practices and policies for entrance facility interconnection discriminate against CLECs in violation of section 251(c)(2). Core should have the opportunity to obtain an order from the Commission in its complaint proceeding (Case 8881), without risk of being prejudiced by the section 271 proceeding (Case 8921). Because (1) Core has demonstrated a likelihood of success on the merits and (2) Core would be prejudiced by a Commission finding related to section 251(c)(2) (checklist item one), Core requests that the Commission stay Case 8921, pending resolution of Case 8881.

BACKGROUND

On October 8, 1999, Core filed a formal complaint with the Commission, docketed as Case 8881 ("Complaint"). In the Complaint, among other things, Core demonstrated that Verizon's policy of refusing to use existing facilities to provide entrance facility interconnection violates section 251(c)(2) of the Act. Specifically, Core demonstrated that Verizon's policy of refusing to use existing facilities to provide entrance facility interconnection unlawfully: (1) discriminates against CLECs in favor of Verizon; (2) denies interconnection at technically feasible points; and (3) denies CLECs interconnection that is equal in quality to that Verizon provides itself.

Since Core filed its complaint, Verizon has undertaken an extraordinary effort to preclude the Commission from reaching a determination on the merits. On May 4, 2001, Verizon filed a motion to dismiss Core's complaint. The Hearing Examiner denied this motion on June 21, 2001, and Verizon appealed the Hearing Examiner's order. On September 28, 2001, the Commission rejected Verizon's appeal of the Hearing Examiner's order.

In its testimony in the proceeding, Staff clearly agreed with Core that Verizon's entrance facility interconnection practices and procedures both discriminated against Core and denied Core interconnection at a technically feasible point in violation of the FCC's rules and section 251(c)(2) of the Act.[2] Indeed, Staff testimony expressly concluded that Verizon:

- Failed to provide interconnection to Core on the same terms and conditions that it provides to itself;
- Delayed Core's entry into the marketplace by requiring Core to use a dedicated entrance facility; and
- Failed to provide interconnection in a reasonable time frame.[3]

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2 Direct Testimony of Steve Molnar on Behalf of the Staff of the Public Service Commission of Maryland, Case 8881, 15-20 (Sept. 21, 2001) ("Molnar Direct") (Attached hereto as Tab B).

3 *Id.*, 21.

Staff completely agreed with Core's position that Verizon's entrance facility interconnection policy discriminated against CLECs in violation of the Act and the FCC's rules.[4]

On March 25, 2002, the Hearing Examiner issued an interlocutory order, which among other things addressed Core's claims related section to 251(c)(2) of the Act. In that order, the Hearing Examiner noted that Core's complaint "depends largely" on Verizon's obligation to provide interconnection "in accordance with the performance standards set forth in Section 251(c) of the Telecommunications Act of 1996 and FCC regulations."[5] The Hearing Examiner went on to note that "[t]he record shows a broad pattern of actions [by Verizon] that consistently delayed Core's interconnection with Verizon."[6] Indeed, the Hearing Examiner concluded that "it is probable ... that Verizon did not treat Core as it would have reasonably treated itself or a subsidiary."[7] Verizon appealed this interlocutory order on April 24, 2002, and the Commission rejected Verizon's appeal on August 7, 2002.

On August 19, 2002, Verizon filed its reply checklist declaration in Case 8921. In that declaration, Verizon attempts to brush aside Core's interconnection complaint as "a classic example of an intercarrier dispute over the terms of an [interconnection agreement] that is pending in a current proceeding."[8] Nothing could be further from the truth, however. As noted above, Core's interconnection complaint in Case 8881 turns directly on the meaning of "Section 251(c) of the Telecommunication Act of 1996 and FCC regulations."[9] Verizon would prefer to box Core's

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4 *Id.*

5 Interlocutory Order, 18.

6 *Id.*, 21.

7 *Id.*

8 Reply Checklist Declaration on Behalf of Verizon Maryland Inc., Case No. 8921, ¶ 38 (Aug. 19, 2002) ("Verizon Reply Checklist Declaration").

9 Interlocutory Order 18.

complaint out of the 271 process because Verizon knows that Core is correct. Indeed, Verizon concedes that the point of interconnection requested by Core was both (1) technically feasible and (2) identical to that Verizon provides to itself.[10] Verizon's strategy is clear: obscure its entrance facility interconnection discrimination, and then use a positive section 271 finding as a means of defeating Core's complaint. The Commission must not let this happen.

ARGUMENT

As demonstrated in the paragraphs that follow, the Commission should grant Core's stay request for two reasons. First, Core has demonstrated in Case 8881 that Verizon's standard entrance facility interconnection practices violate section 251(c)(2) of the Act, and therefore checklist item one. Second, a Commission determination of whether Verizon complies with checklist item one risks prejudicing Core's claims in Case 8881.

I. CORE HAS DEMONSTRATED IN CASE 8881 THAT VERIZON'S STANDARD ENTRANCE FACILITY INTERCONNECTION PRACTICES VIOLATE SECTION 251(C)(2), AND THEREFORE CHECKLIST ITEM ONE.

Checklist item one of the section 271 checklist requires Verizon to provide "interconnection in accordance with section section 251(c)(2)" of the Act.[11] Among other things, section 251(c)(2) of the Act requires Verizon to provide interconnection to CLECs: (1) "at any technically feasible point"[12]; (2) "that is at least equal in quality to that by provided by [Verizon] to itself [and others, including affiliates]"[13]; and (3) "on rates, terms, and conditions that are just,

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10 Verizon Reply Checklist Declaration, ¶ 44.

11 47 U.S.C. § 271(c)(2)(B)(i).

12 *Id.* § 251(c)(2)(B).

13 *Id.* § 251(c)(2)(C).

reasonable, and nondiscriminatory."[14] As Core has demonstrated in Case 8881, Verizon's entrance facility interconnection policy violates section 251(c)(2), and therefore checklist item one, because it: (1) denies CLECs interconnection at a technically feasible point; (2) denies CLEC interconnection that is equal in quality to that Verizon provides to itself and to others; and (3) is discriminatory.

A. Verizon's Entrance Facility Interconnection Policy Violates the Section 251(c)(2) "Technical Feasibility" Standard

In its reply declaration, Verizon admits that using existing facilities for entrance facility interconnection is technically feasible.[15] That alone is enough to demonstrate that Verizon's standard policy[16] of refusing to use existing facilities for entrance facility interconnection is contrary to section 251(c)(2) and therefore violates competitive checklist item one.

The FCC has clarified significantly the contours of section 251(c)(2)'s "technical feasibility" standard. First, the FCC has concluded that the term "technically feasible" refers "solely to technical or operational concerns, rather than economic, space or site considerations."[17] Moreover, the FCC has determined that the obligations imposed by section 251(c)(2) "include modifications to incumbent LEC facilities to the extent necessary to accommodate

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14 *Id.* § 251(c)(2)(D).

15 Verizon Reply Checklist Declaration, ¶ 44. *See also* Molnar Direct, 15 ("Verizon does not dispute that [the interconnection requested by Core] is technically feasible".).

16 *See, e.g.*, Molnar Direct, 14 ("Verizon claims that it did not discriminate in its treatment of Core but, rather, followed its established requirement that entrance facilities can only be provided on a dedicated basis. If all carriers are treated alike, [according to Verizon,] there can be no claim of discrimination.")

17 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 198 (1996) ("Local Competition Order") (subsequent history omitted).

interconnection...."[18] Furthermore, section 251(c)(2) "bars consideration of costs in determining 'technically feasible' points of interconnection."[19] A BOC, such as Verizon, also "must accept the novel use of, and modification to, its network facilities to accommodate the interconnector...."[20] Finally, ILECs, such as Verizon, "have a duty to make available to requesting carriers general information indicating the location and technical characteristics of incumbent LEC network facilities."[21]

At bottom, section 251(c)(2)'s "technical feasibility" standard encompasses "more than what is merely 'practical' or similar to what is ordinarily done."[22] By refusing to provide entrance facility interconnection to CLECs using existing facilities, Verizon interconnection entrance facility policy violates section 251(c)(2) and checklist item one. Verizon's incentive for refusing to provide interconnection at this clearly technically feasible point is obvious: Verizon's policy forces CLECs, like Core, "to make inefficient use of their own and incumbent LEC facilities, with anticompetitive effects."[23]

B. Verizon's Entrance Facility Interconnection Policy Violates the Section 251(c)(2) "Equal In Quality" Standard

By refusing to utilize existing facilities for entrance facility interconnection Verizon also violates the "equal in quality" standard of section 251(c)(2), and therefore checklist item one. Attempting to flout its "equal in quality" obligation, Verizon brazenly alleges that it has the "sole

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18 *Id.*, ¶ 198.

19 *Id.*, ¶ 202.

20 *Id.*

21 *Id.*, ¶ 205.

22 *Id.*, ¶ 202.

23 *Id.*, ¶ 205.

right and discretion" for how it interconnects with Core.[24] This Verizon position, however, runs squarely against the section 251(c)(2)'s equal in quality standard, and is thus contrary to checklist item one.

The FCC has explained that "the equal in quality [interconnection standard of section 251(c)(2)(C) of the Act] requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, *or any other party*."[25] Elaborating on this standard, the FCC went so far as to state in section 51.305(a)(5) of its interconnection regulations:

> An incumbent LEC shall provide ... interconnection with the incumbent LEC's network ... [o]n terms and conditions ... that are no less favorable than the terms and conditions upon which the incumbent LEC provides interconnection to itself. This includes, but is not limited to, *the time* within which the incumbent LEC provides such interconnection.[26]

Commission Staff has agreed with Core's interpretation of this rule, concluding that "it is clear that the FCC requires provisioning intervals for interconnection that apply to CLECs to be the same as those which apply to the incumbent carrier, or Verizon."[27]

Further explaining the rationale behind the FCC's equal in quality standard, Staff stated:

> I believe that a requesting carrier would perceive the equal [in quality] interconnection standard to include installation intervals that are equal to those Verizon provides to itself in serving retail customers. **Anything less would mean that Verizon would have the ability to create an advantage for itself by serving its retail customers expeditiously while delaying the market entry of its potential competitors.**

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24 Verizon Reply Checklist Declaration, ¶ 42.

25 Local Competition Order, ¶ 224 (emphasis added).

26 47 C.F.R. § 51.305(a)(5) (emphasis added).

27 Molnar Direct, 18.

* * *

> The immediate benefit to an incumbent is that delayed entry creates additional costs for competitors. The fact that the competitor cannot operate and earn revenue while it continues to incur expenses only adds to the disadvantages that a new CLEC faces. The longer the delay, the greater the cost the incumbent carrier can impose and the less likely that the competitor will succeed in the long run. In addition, if the competitor has a business plan that targets certain customer groups, then the incumbent can market its services more aggressively during the period of delay. The Telecommunications Act of 1996 and its subsequent implementation by the FCC reflect the effort that was undertaken to minimize the opportunity for incumbent carriers to engage in these kind of activities.[28]

In other words, section 251(c)(2)'s equal in quality obligation is absolutely antithetical to Verizon's assertion that it has the "sole right and discretion" for how it interconnects with CLECs.[29]

As demonstrated above, Verizon's refusal to use existing facilities to provide entrance facility interconnection violates section 251(c)(2)'s equal in quality standard. Therefore, Verizon simply cannot satisfy checklist item 1.

C. Verizon's Entrance Facility Interconnection Policy Violates the Section 251(c)(2) "Nondiscrimination" Standard

Similarly, by refusing to utilize existing facilities for entrance facility interconnection Verizon also violates its section 251(c)(2) obligation to provide nondiscriminatory interconnection, and as such, Verizon also violates item one of the competitive checklist. Verizon seeks to defend its discriminatory conduct by alleging that "Verizon MD cannot discriminate against carriers in the provision of interconnection trunk services in favor of its end user customers,

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28 Molnar Direct, 18 (emphasis added).

29 Verizon Reply Checklist Declaration, ¶ 42.

since it does not provide interconnection trunking to end users in the first place."[30] However, Verizon's claim directly contradicts the plain language of the statute and the FCC's implementing rules.

The FCC has concluded that the term "nondiscriminatory" requires both a comparison of how Verizon treats third parties and how Verizon treats itself. As the FCC has found:

> Because the ILECs have an incentive to discriminate in favor of themselves, "...we reject for purposes of section 251, our historical interpretation of 'nondiscriminatory,' which we interpreted to mean a comparison between what the incumbent LEC provided other parties in a regulated monopoly environment. We believe that the term 'nondiscriminatory,' as used throughout section 251, applies to the terms and conditions an incumbent LECs imposes on third parties as well as itself. In any event, by providing interconnection to a competitor in a manner less efficient than an incumbent LEC provides itself, the incumbent LEC violates the duty to be 'just' and 'reasonable' under section 251(c)(2)(D)."[31]

Further elaborating on this standard in the section 271 context, the FCC has noted that incumbent LECs must "provide interconnection to [CLECs] in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operation."[32]

Verizon mistakenly believes that its nondiscrimination obligation only requires that Verizon treat CLECs equally, without regard to how Verizon treats itself.[33] This is pure nonsense, however. As the FCC has noted in the section 271 context:

> [F]or those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its **own retail service offerings**, the BOC must provide access to competing

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30 *Id.*

31 *Id.*, ¶ 218.

32 *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of New York,* Memorandum Opinion and Order, 15 FCC Rcd 75, ¶ 65 (1999) ("New York 271 Order").

33 Verizon Reply Checklist Declaration, ¶ 42.

> carriers in "substantially the same time and manner" as it provides to itself. Thus, where a retail analogue exists, a BOC must provide access that is **equal to (i.e., substantially the same as) the level of access** that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness.[34]

Following the FCC's nondiscrimination standard – and dismissing Verizon's position, Staff noted in Case 8881:

> Verizon is attempting to cloud the application of the Act and the FCC's rules by claiming that Verizon only interconnects with carriers and not retail customers. According to Verizon, there should be no comparison between the provision of interconnection to carriers and the provision of retail services to retail customers. Contrary to Verizon's contention, if it were not appropriate to make such a comparison, the plain language of the Act and the FCC's rules would have no meaning.[35]

Of course, Verizon would prefer that its nondiscrimination obligation had no meaning, but the law, the FCC's implementing rules, and section 271 require otherwise.

In its reply declaration, Verizon readily admits that it refused to interconnect with Core over existing facilities for Verizon's own "future service requirements."[36] In other words, Verizon discriminated against Core in order to preserve capacity for Verizon's own future needs. This is exactly the type of discrimination that violates section 251(c)(2) of the Act, and the requirements of checklist item one.

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34 New York 271 Order, ¶ 65.

35 Rebuttal Testimony of Steve Molnar on behalf of the Staff of the Public Service Commission of Maryland, Case 8881, 9 (Oct 19, 2001) (attached hereto as Tab C).

36 Verizon Reply Checklist Declaration, ¶ 43.

II. A COMMISSION DETERMINATION OF WHETHER VERIZON COMPLIES WITH CHECKLIST ITEM ONE UNFAIRLY RISKS PREJUDICING CORE'S CLAIMS IN CASE 8881

As demonstrated above, Core – as supported by Staff – has demonstrated that Verizon's entrance facility interconnection practices and policies violate section 251(c)(2) of the Act. Although Verizon claims that Core's claims are a "classic intercarrier dispute,"[37] Core has absolutely no doubt that Verizon will use any favorable section 271 finding as a defense in Case 8881. Thus, any finding in this proceeding stands to prejudice unfairly Core's complaint in Case 8881, which has been ongoing since 1999.

Core's complaint, on its face, demonstrates that Verizon's entrance facility interconnection process violates section 251(c)(2) of the Act, and as such, Verizon simply cannot satisfy checklist item one. Core is concerned, however, that the large number of issues and parties in this proceeding will enable Verizon to gloss over the deficiencies of its discriminatory entrance facility interconnection practices. In short, Core has no doubt that Verizon would rather take its chances in a section 271 proceeding, rather than continue defending its unlawful interconnection practices in a formal complaint proceeding.

The Commission should not let Verizon end-run its complaint process, nor should the Commission permit Verizon to benefit from its endless efforts to delay resolution of Core's complaint in Case 8881. Rather, the Commission should stay this proceeding pending resolution of Core's interconnection complaint in Case 8881.

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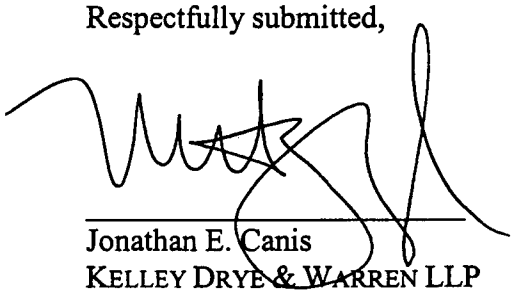
37 *Id.*, ¶ 38.

CONCLUSION

Consistent with the foregoing, the Commission should stay Case 8921 pending Commission resolution of Case 8881.

Respectfully submitted,



Jonathan E. Canis
KELLEY DRYE & WARREN LLP
1200 19th Street NW, Suite 500
Washington, D.C. 20036
(202) 955-9600

Michael B. Hazzard
KELLEY DRYE & WARREN LLP
8000 Towers Crescent Drive, Suite 1200
Vienna, VA 22182
(703) 918-2300

COUNSEL FOR CORE COMMUNICATIONS, INC.

DATED: September 9, 2002

DUPLICATE

BEFORE THE
MARYLAND PUBLIC SERVICE COMMISSION

In the Matter of the Review by the Commission Into Verizon Maryland Inc.'s Compliance with the Conditions Of 47 U.S.C. § 271(c)	* * * * *	Case No. 8921

REPLY OF CORE COMMUNICATIONS, INC.
TO VERIZON'S RESPONSE

Core Communications, Inc. ("Core") hereby replies to the September 27, 2002 Response of Verizon Maryland Inc. ("Verizon") to Core's Petition to Stay Proceeding Pending Resolution of Formal Complaint.

Introduction and Summary

In the Petition to Stay, Core asked the Commission to stay Case 8921, pending resolution of Case 8881 – a complaint filed by Core in 1999 demonstrating direct violations of Verizon's duty to interconnect with competitors under Section 251(c)(2) of the 1996 Act.[1] The stay would permit the Commission to determine whether Verizon is truly in compliance with item one of the Act's section 271 checklist (interconnection in accordance with the requirements of section 251(c)(2)).[2] In its response, Verizon argued that Case 8881 involves novel interpretive issues that are specific to Core, and which are irrelevant to a determination whether Verizon is in compliance with checklist item one.[3] **Verizon is wrong, and Verizon knows that it is wrong.**

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1 Core Communications, Inc.'s Petition to Stay Proceeding Pending Resolution of Formal Complaint (Sept. 10, 2002) ("Petition").

2 *See*, Petition, at 1-2.

3 *See generally*, Verizon Maryland Inc.'s Response to the Petition of Core Communications, Inc. to Stay Proceeding Pending Resolution of Formal Complaint (Sept. 27, 2002) ("Response").

This Reply focuses on three key points in reply to Verizon's response:

(1) By its own admission, Verizon undoubtedly has a general policy restricting use of existing facilities (*i.e.*, infrastructure) when a competitor requests interconnection using the entrance facilities method;

(2) Resolution of Case 8881 would not require a novel interpretation of Verizon's duty to interconnect; and

(3) Verizon absolutely will use a favorable 271 recommendation as a carte blanche defense against Core's allegations of discrimination in Case 8881.

Despite the new and unwarranted assertions raised in Verizon's response, Case 8881 squarely poses the question of whether Verizon is living up to its checklist item one interconnection requirements. As Core noted in its Petition, "a determination by the Commission in this proceeding regarding whether Verizon provides nondiscriminatory access to interconnection in accordance with section 251(c)(2) of the Communications Act stands to unfairly prejudice Core's complaint against Verizon in Case 8881...."[4] The Commission should therefore stay Case 8921 pending resolution of Case 8881.

Argument

I. VERIZON UNDOUBTEDLY HAS A GENERAL POLICY OF RESTRICTING USE OF EXISTING FACILITIES WHEN A COMPETITOR REQUESTS INTERCONNECTION USING THE ENTRANCE FACILITIES METHOD

In its Response, Verizon asserts that it has no "policy" of denying competitors access to existing facilities for interconnection purposes.[5] This assertion is central to Verizon's

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[4] Petition, at 1.

[5] Response, at 4, note 10 ("Core claims throughout its Petition that it has done the work to demonstrate that Verizon's supposed policy of refusing to use existing facilities to provide

claims that Case 8881 is "an individualized interconnection agreement dispute,"[6] and/or "a fact-specific intercarrier dispute."[7] However, Verizon's assertion is completely undermined by Verizon's own testimony in Case 8881, as well as the actions taken by Verizon during and subsequent to the events at issue in Case 8881 in Maryland and in other states.

No doubt, Case 8881 is, in part, an intercarrier dispute arising out of an interconnection agreement. However, as Case 8881 has progressed through discovery and testimony, it is now clear that the conduct that gave rise to the case is not isolated to Core, its interconnection agreement, or to the specific events at issue in the case. Indeed, Verizon has unilaterally subjected Core to Verizon's unlawful interconnection policy pursuant to no fewer than three different interconnection agreements, including the Statement of Generally Available Terms and Conditions, in Maryland. Moreover, Verizon has unilaterally subjected Core to Verizon's unlawful policy in other states, and Core is aware that Verizon currently is litigating this very issue before the West Virginia Public Service Commission.[8] Thus, contrary to

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entrance facility interconnection violates section 251(c)(2) of the Act. Core, however, has not even established that Verizon has such a policy in the first place...").

6 *Id.*, at 1.

7 *Id.*

8 *North County Communications v. Verizon West Virginia Inc.*, Case No. 02-0254-T-C. Core has attached hereto as Exhibit A the Rebuttal Testimony of Dannie L. Walker, Technical Analyst, on Behalf of the Staff of the Public Service Commission of West Virginia (Oct. 4, 2002). In this testimony, Staff of the West Virginia Commission take positions virtually identical to those put forward by the Staff of this Commission. For example, Mr. Walker states that "Verizon-WV's unilateral refusal to interconnect where requested by NCC, coupled with the length of time and demands associated with the final interconnection with NCC, appear to violate the emphasized provisions of Section 251(c)(2) of the TA96." *Id.*, 4. Similarly, Mr. Walker confirms this Commission's Staff's view that "TA96 and the FCC's regulations implementing **the Act requires Verizon-WV's provision of interconnection, including intervals, to be judged according to the installation intervals it provides to other carriers**

Verizon's baseless assertions, Verizon's actions vis-à-vis Core without question arise from a generic Verizon policy, and not from anything unique or peculiar to the existing interconnection agreement between Core and Verizon.

Indeed, in its Case 8881 Reply Panel Testimony, Verizon witnesses offer a straightforward (although unlawful) description Verizon's unilateral policy of building new, dedicated facilities to provision entrance facilities to competitors for interconnection purposes:

> Q. WHY DOES VERIZON MD BUILD DEDICATED INTEROFFICE FACILITIES (PHYSICAL INFRASTRUCTURE) FOR TELECOMMUNICATIONS CARRIERS FOR PURPOSES OF INTERCONNECTION?
>
> A. Verizon MD builds dedicated interoffice facilities to carriers because they generally require much larger amounts of capacity as compared to retail end-users. Both CLECs and IXCs typically order a substantial amount of high capacity services from Verizon MD that they use to connect to other carriers and/or to provide service to their end users. As such, Verizon MD these carrier locations (referred to as pops) are similar in function to Verizon MD's own wire centers/end offices. Furthermore, Core clearly defines its location (pop) as its "Baltimore wire center," not an end-user location...[9]

Verizon referenced nothing unique to the Core/Verizon interconnection agreement, as Verizon inflicts its unilateral and unlawful policy on all carriers notwithstanding their interconnection agreements.

As Core witness Bret Mingo noted in his direct testimony in this case, Verizon's dedicated entrance facility policy continues to be put into practice consistently. As recently as May, 2002, Core requested a new interconnection arrangement with

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for interconnection and to its retail customers for the provision of retail service." *Id.*, 7 (emphasis added).

[9] Md. P.S.C. Case No. 8881, Reply Panel Testimony of David J. Collins, John R. Gilbert and David Visser (Oct. 5. 2001)("Reply Panel Testimony"), at 24.

Verizon, using the entrance facility method, in the Salisbury LATA. In response to that request, Verizon once again refused just as it did in 1999 (when Core had an entirely different interconnection agreement) to use existing, shared facilities for interconnection purposes.[10] Clearly, the conduct complained of in Case 8881 is far more widespread than a "fact-specific intercarrier dispute."

II. RESOLUTION OF CASE 8881 WOULD NOT REQUIRE A NOVEL INTERPRETATION OF VERIZON'S DUTY TO INTERCONNECT

Verizon falsely argues that Case 8881 is "a classic example of a new interpretive dispute concerning the precise content of a LEC's obligations to its competitors, disputes that the FCC's rules have not yet addressed and that do not involve per se violations of the Act..."[11] Yet, none of the issues raised in Case 8881 is "new," and Core's complaint demonstrates direct violations of FCC regulations promulgated in 1996 to implement Section 251(c)(2) of the Act. Core is by no means attempting to hold the 271 process hostage to new interpretive issues; rather Core's complaint addresses direct violations of well established interconnection regulations.

To be clear, the original complaint in Case 8881 was filed October 9, 1999. Clearly, the issues are not new to Verizon – indeed, Verizon has done every thing in its power to avoid a resolution, including endless appeals of interlocutory orders. Case 8881 involves direct violations of longstanding FCC regulations requiring Verizon to provide nondiscriminatory interconnection,[12] interconnection at any technically feasible point,[13] and interconnection on just

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10 *See*, Direct Testimony of Bret L. Mingo, at 3-5.

11 Response, at 3, quoting *In the Matter of Application of Verizon Pennsylvania Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion & Order, (rel. Sept. 19, 2001)("Pennsylvania 271 Order"), at ¶92.

12 47 C.F.R. §51.305(a)(5).

and reasonable terms.[14] There is nothing new or novel about a carrier, such as Core, attempting to use establish complaint procedures to avail itself of the existing interconnection regulations.

III. VERIZON ABSOLUTELY WILL USE A FAVORABLE 271 RECOMMENDATION AS A CARTE BLANCHE DEFENSE AGAINST CORE'S ALLEGATIONS OF DISCRIMINATION IN CASE 8881

There can be no doubt that Verizon will use any favorable 271 recommendation from the Commission as grounds to file a fresh motion to dismiss Case 8881, thus accomplishing the proverbial "end-run" around the formal complaint process. Indeed, in its testimony and other filings in Case 8881, Verizon has already raised its approvals in New York and other states as a defense against Core's section 251(c)(2) claims. For example, in its Case 8881 Reply Panel Testimony, Verizon states:

> Q. IN DETERMINING WHETHER VERIZON IS PROVIDING INTERCONNECTION TO CLECS IN A NONDISCRIMINATORY FASHION PURSUANT TO SECTION 251(c)(2) OF THE ACT, [DOES] THE FCC... COMPARE THE QUALITY AND TIMING OF THE PROVISION OF INTERCONNECTION TRUNKING WITH THE QUALITY AND TIMING OF PROVISIONING OF SERVICES TO VERIZON'S END-USERS?
>
> A. No, [it does] not... In approving Verizon's section 271 petition in New York, the FCC expressly approved of, and relied upon, this parity standard. In determining that Verizon NY was not discriminating in the timing of its provision of interconnection trunking to CLECs, the FCC held that "Bell Atlantic's provisioning of interconnection trunks for competitive LECs is comparable to its performance for interexchange carriers, which indicates that Bell Atlantic is meeting its equal-in-quality obligations." The FCC has made similar findings in each of its subsequent orders approving Verizon's section 271

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13 *Id.*, §51.305(a)(2).

14 *Id.*, §51.305(a)(5).

> petitions in Massachusetts, Connecticut, and Pennsylvania. The trunk interconnection architectures, methods, and performance standards and measures at Verizon uses with CLECs in Maryland are the same as in New York, Massachusetts, Connecticut and Pennsylvania.[15]

Verizon's consistent reliance on 271 approvals (even though Verizon's entrance facility interconnection process has never been addressed in a 271 proceeding prior to this case) in other states as a defense in Case 8881 guarantees that it will rely on a favorable 271 recommendation in Maryland as well. Whether appropriate or not, this use of a favorable 271 recommendation will unfairly prejudice Core's claims against Verizon. Thus Case 8881, already three years old, stands to suffer further delay, and perhaps even dismissal, without a specific ruling on its merits.[16]

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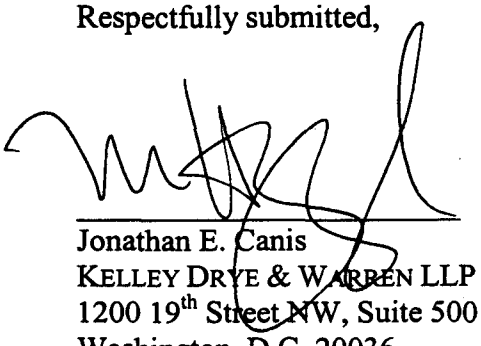
[15] Reply Panel Testimony, at 22. Verizon continues to rely on its previous 271 approvals in more recent filings in Case 8881. For example, in its May 6, 2002 Brief on Appeal of Hearing Examiner's Interlocutory Ruling, at 9, Verizon states: "Accordingly, there is no legal basis for Core's claim that Verizon MD violated the nondiscrimination provisions in section 51.305 of the FCC's rules by failing to interconnect with Core in the same manner and in the same timeframe that it provides retail end user services. Indeed, the FCC, in applying its own regulations, has never made this type of comparison. This is clearly illustrated in the various FCC opinions approving Verizon's section 271 applications in New York and in other states."

[16] Interestingly, Verizon's use of previous 271 approvals as a defense in Case 8881 strongly suggests that Verizon itself believes that its dedicated entrance facility policy is implicated in a 271 review of its compliance with the checklist.

Conclusion

For all the foregoing reasons, the Commission should stay Case 8921, pending Commission resolution of Case 8881.

Respectfully submitted,



Jonathan E. Canis
KELLEY DRYE & WARREN LLP
1200 19th Street NW, Suite 500
Washington, D.C. 20036
(202) 955-9600

Michael B. Hazzard
KELLEY DRYE & WARREN LLP
8000 Towers Crescent Drive, Suite 1200
Vienna, VA 22182
(703) 918-2300

Core Communications, Inc.

October 11, 2002

DUPLICATE

BEFORE THE
MARYLAND PUBLIC SERVICE COMMISSION

In the Matter of the Review by the Commission Into Verizon Maryland Inc.'s Compliance with the Conditions Of 47 U.S.C. § 271(c)	* * * * *	Case No. 8921

BRIEF OF INTERVENOR CORE COMMUNICATIONS, INC.

Christopher F. Van de Verg
CORE COMMUNICATIONS, INC.
209 West Street, Suite 302
Annapolis, MD 21401
(410) 216-9865

Jonathan E. Canis
KELLEY DRYE & WARREN LLP
8000 19th Street NW, Suite 500
Washington, D.C. 20036
(202) 955-9600

Michael B. Hazzard
KELLEY DRYE & WARREN LLP
8000 Towers Crescent Drive, Suite 1200
Vienna, VA 22182
(703) 918-2300

COUNSEL FOR CORE COMMUNICATIONS, INC.

DATED: November 18, 2002

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. VERIZON'S DEDICATED ENTRANCE FACILITY POLICY VIOLATES SECTION 251(C)(2) AND THEREFORE CHECKLIST ITEM ONE – INTERCONNECTION 2

A. Verizon's Dedicated Entrance Facility Policy Is Systemic And Well Documented 4

i. Verizon's policy constitutes a "systemic problem" worthy of section 271 scrutiny 4

ii. Verizon witness Albert's testimony denying the existence of a policy is wholly inconsistent with Verizon's actual interconnection practices and policy statements 7

iii. Verizon's recent offers to interconnect using existing, shared facilities only highlights the existence of a systemic problem 10

B. Verizon's Dedicated Entrance Facility Policy Violates the Section 251(c)(2) "Technically Feasible" Standard 11

C. Verizon's Entrance Facility Interconnection Policy Violates the Section 251(c)(2) "Equal In Quality" Standard 14

D. Verizon's Entrance Facility Interconnection Policy Violates The Section 251(c)(2) "Nondiscrimination" Standard 16

III. VERIZON'S POLICY TO REFUSE TO PASS ANI INFORMATION OVER LOCAL INTERCONNECTION TRUNKS VIOLATES SECTION 251(C)(2) AND THEREFORE CHECKLIST ITEM ONE – INTERCONNECTION 18

IV. VERIZON'S REFUSAL TO PROVIDE INFORMATION REGARDING DARK FIBER LOCATION AND AVAILABILITY VIOLATES CHECKLIST ITEMS FOUR (LOOPS) AND FIVE (TRANSPORT) 20

V. THE PUBLIC INTEREST DICTATES AGAINST APPROVAL OF VERIZON'S 271 APPLICATION AT THE PRESENT TIME 23

VI. CONCLUSION 27

BEFORE THE
MARYLAND PUBLIC SERVICE COMMISSION

In the Matter of the Review by the Commission Into Verizon Maryland Inc.'s Compliance with the Conditions Of 47 U.S.C. § 271(c)	* * * * *	Case No. 8921

BRIEF OF INTERVENOR CORE COMMUNICATIONS, INC.

I. INTRODUCTION

The Commission should recommend that Verizon's 271 application be denied because – as demonstrated in this brief – Verizon has failed to meet section 271 checklist standards with respect to interconnection, loops, and transport. In addition, the public interest dictates that Verizon's application be denied at this time, because the vigorous and lasting competition envisioned in the Act has not come to pass in Maryland.

Verizon's failure to meet several checklist standards is clear and demonstrable. Verizon's Dedicated Entance Facility Policy – by which Verizon refuses to interconnect using its own, existing network facilities – violates the technical feasibility, equal in quality, and nondiscriminatory interconnection standards of section 251(c)(2). Thus, Verizon's Dedicated Entrance Facility Policy by itself violates checklist item one three times over.

Verizon's last-ditch attempt to disown its Dedicated Entrance Facility Policy casts doubt on the sincerity with which it approaches the 271 process and the development of competition in Maryland. By offering to interconnect using existing, shared facilities – for the first time – in the week prior to hearings in this case, Verizon has only highlighted this problem.

Verizon's refusal to provide automatic number identification ("ANI") to interconnecting CLECs – which would allow CLECs to identify the calling party for calls originating on the

Verizon network – violates the equal in quality and nondiscriminatory interconnection standards of checklist item one.

Verizon's refusal to provide meaningful access to dark fiber availability information violates the unbundling requirement of section 251(c)(3) and specific FCC guidance requiring access to such information. Because the FCC requires Verizon to offer dark fiber as both a loop and a transport UNE, Verizon's unreasonable practices violate checklist items four (loops) and five (transport).

The Commission is responsible for ensuring open markets in Maryland, and this Commission has the power to curb the anti-competitive conduct documented in this brief. Verizon, through its continuing violation of multiple checklist items, has given the Commission no choice but to recommend that its 271 application be denied. Although the FCC has the final word on 271 applications, the fact is that the FCC has never approved a 271 application without a favorable recommendation from the state commission. The Commission should tell the FCC in no uncertain terms that Verizon has not lived up to its checklist obligations. Anything less will give the FCC the "wiggle room" it needs to approve Verizon's substandard 271 application – leaving consumers, competition, and competitors in the lurch.

II. VERIZON'S DEDICATED ENTRANCE FACILITY POLICY VIOLATES SECTION 251(C)(2) AND THEREFORE CHECKLIST ITEM ONE – INTERCONNECTION

When a CLEC requests entrance facility interconnection[1] at a CLEC point of presence ("POP"), Verizon's policy is to refuse use of existing, shared Verizon network facilities. Instead,

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[1] An "entrance facility" is a physical connection that connects a CLEC Central Office to a Verizon Central Office. Entrance facility interconnection is a method of interconnection in which Verizon interconnection equipment is located within the CLEC POP, and connected to the Verizon network by means of one or more entrance facility circuits. See

Verizon forces the CLEC to wait for six months to a year or more while Verizon constructs new, dedicated facilities built solely for interconnection purposes. Only once Verizon has completed construction of these dedicated facilities will Verizon complete the interconnection process by providing actual interconnection trunks.

Verizon's Dedicated Entrance Facility Policy[2] has multiple anti-competitive effects. These include, adding unnecessarily to the cost of interconnection, delaying CLEC entry into new markets, and hamstringing a CLEC's ability to plan and execute new service rollouts.

Verizon's Dedicated Entrance Facility Policy is well documented. Yet, Verizon has used the hearings in this case in a cynical attempt to rewrite the record and disown – at least for rhetorical purposes – its policy. In addition, in the week prior to hearings in this case, Verizon offered for the first time ever to interconnect with CoreTel using existing, shared facilities -- demonstrating the feasibility of Core's request. Together, Verizon's testimony at the hearings, and last minute offers to interconnect, form a blatant attempt to conceal the true nature and extent of Verizon's Dedicated Entrance Facility Policy.

Verizon's Dedicated Entrance Facility Policy violates item one (interconnection) of the section 271 checklist. Checklist item one requires Verizon to provide "interconnection in accordance with section 251(c)(2)" of the Act.[3] Among other things, section 251(c)(2) of the Act requires Verizon to provide interconnection to CLECs: (1) "at any technically feasible point"[4]; (2) "that is at least equal in quality to that by provided by [Verizon] to itself [and others,

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generally, Direct Testimony of Douglas A. Dawson on Behalf of Core Communications, Inc. ("Dawson Direct"), at 9 (July 15, 2002).

2 This term shall be used throughout this brief to refer to Verizon's policy as outlined herein.

3 47 U.S.C. § 271(c)(2)(B)(i). *Also see*, Virginia 271 Order, at ¶ C-17.

4 *Id.* § 251(c)(2)(B).

including affiliates]"[5]; and (3) "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[6] Verizon's Dedicated Entrance Facility Policy violates the technically feasible, equal in quality, and nondiscriminatory standards of section 251(c)(2).

A. Verizon's Dedicated Entrance Facility Policy Is Systemic And Well Documented

There can be no doubt that Verizon – as a matter of policy – uses only newly constructed, dedicated facilities for CLEC interconnection purposes. The Dedicated Entrance Facility Policy can be documented in practice, as well as by Verizon's statements in other proceedings. Notwithstanding past practice and policy statements, Verizon testified – amazingly – at the hearings in this case, that it has no such policy. In fact, Verizon has testified that it has no written policies at all for entrance facility intraconnection. And in the week before hearings in this case, Verizon offered for the first time to interconnect with CoreTel using existing, shared facilities. The Commission should ignore Verizon's attempts to rewrite its record of noncompliance with checklist item one.

i. Verizon's policy constitutes a "systemic problem" worthy of section 271 scrutiny

Beginning in 1999, CoreTel has requested interconnection with Verizon at 11 CoreTel POPs, located in ten LATAs, covering all or parts of eight states (including Maryland), pursuant to five different interconnection agreements.[7] For eight of these 11 POPs, Core noted the existence of previously installed Verizon network equipment (i.e., a functioning, in-service

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5 *Id.* § 251(c)(2)(C).

6 *Id.* § 251(c)(2)(D).

7 Declaration of Bret L. Mingo ("Mingo Declaration"), at 1. The Mingo Declaration is attached hereto as Attachment 1.

multiplexer with spare capacity, connected by fiber to a Verizon CO), and requested specifically that Verizon use that equipment to facilitate interconnection.[8] For eight of eight of these POPs, Verizon denied CoreTel's request, and informed CoreTel that Verizon would not interconnect with CoreTel until Verizon had completed construction of new, dedicated facilities (a dedicated fiber ring between the Core POP and Verizon CO).[9] To quote Verizon witness Donald E. Albert: "to me a policy is something that we always, always do. That's what a policy would be."[10] Clearly, Verizon's Dedicated Entrance Facility Policy is the type of "systemic problem" that warrants review pursuant to Section 271.[11]

Verizon's Dedicated Entrance Facility Policy has obvious, anti-competitive effects. First, the policy impedes CLEC entry into local markets. Without interconnection to Verizon, a facilities-based CLEC can not enter the market – a CLEC's customers must be able to make and receive calls to and from Verizon's customers.[12] Verizon's Dedicated Entrance Facility Policy delays the interconnection process by adding the unnecessary and extremely time-consuming step of constructing a dedicated fiber ring where an existing, shared ring facility would suffice.

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8 *Id.* at 2.

9 *Id.* at 2.

10 Transcript, at 685-86 (Tuesday, October 29, 2002).

11 Verizon's Dedicated Entrance Facility Policy is also at issue in a separate proceeding, Case No. 8881, *In the Matter of the Complaint of Core Communications, Inc. v. Verizon Maryland Inc.* However, the Commission has noted that "Core is not precluded from raising the substance of its pending Case No. 8881 complaint before both this Commission and the FCC during the respective §271 proceedings, particularly if Core believes that the complaint is indicative of a systemic problem warranting the FCC's finding of checklist noncompliance."[11] Case No. 8921, *In the Matter of the Review by the Commission into Verizon Maryland Inc.'s Compliance with the Conditions of 47 U.S.C. § 271(c)*, Order No. 78088, at 3 (Oct. 24, 2002).

12 *See*, Dawson Direct, at 22-23. *Also see*, Transcript at 727-29 (Tuesday, October 29, 2002).

The construction can take anywhere from six months to a year or more. That delay translates directly into a minimum six-month delay in a CLEC's market entry in a given area.

Second, the policy adds unnecessary costs to the interconnection process. Interestingly, it adds to both the CLEC's and Verizon's costs. A CLEC pays additional rent, utility, and equipment costs to maintain its POP while Verizon constructs new, dedicated facilities. Verizon will not even discuss interconnection until the CLEC has designated an address and specific interconnection facilities and equipment, so there is no chance for a CLEC to "time" the construction process.[13] Verizon pays additional costs in constructing new, dedicated facilities, including two or more fiber multiplexer units, at least two fiber strands between the Core POP and the Verizon CO, and additional collocation charges at the CLEC POP.

Finally, because the construction process is unpredictable, a CLEC risks losing customers who would otherwise prefer that CLEC's services. Verizon takes the position that it has sole control over the construction process, and does not make any meaningful commitment to complete the construction on any schedule. That means the CLEC cannot relay meaningful information to its potential customers regarding time to market. Without that information, many customers would prefer simply to remain with Verizon.

As Staff testified in another proceeding:

> The immediate benefit to an incumbent is that delayed entry creates additional costs for competitors. The fact that the competitor cannot operate and earn revenue while it continues to incur expenses only adds to the disadvantages that a new CLEC faces. The longer the delay, the greater the cost the incumbent carrier can impose and the less likely that the competitor will succeed in the long run. In addition, if the competitor has a business plan that targets certain customer groups, then the incumbent can market its services more aggressively during the period of delay. The Telecommunications Act of 1996 and its subsequent

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13 *See*, Transcript at 727-29 (Tuesday, October 29, 2002).

implementation by the FCC reflect the effort that was undertaken to minimize the opportunity for incumbent carriers to engage in these kind of activities.[14]

ii. Verizon witness Albert's testimony denying the existence of a policy is wholly inconsistent with Verizon's actual interconnection practices and policy statements

On cross-examination during the hearings in this case, Verizon witness Donald E. Albert made a series of deliberate, calculated, and novel assertions. These statements require a systematic response, not only because they are factually incorrect, but also because they bring into question the integrity of all of Mr. Albert's testimony in this case. To be delicate, Mr. Albert's testimony is completely at odds with CoreTel's actual experience in interconnecting with Verizon over the past four years, as well statements made by Verizon witnesses in other proceedings.

Mr. Albert testified:

- That Verizon does not have a policy of uniformly denying CLEC requests to interconnect using existing, shared facilities:
    - "I think the question relative to the policy and to me, when I'm answering this, to me a policy is something that we always, always do. That's what a policy would be. If the question is do we always, always, always put interconnection trunks over a connection that's designed and built as an interoffice facility or [686] will we sometimes put an interconnection trunk over a connection that's designed as a loop facility, we have no policy on that." [15]
- That Verizon looks at each CLEC interconnection "individually," using an analysis that includes "five or six" "different engineering factors" before deciding whether to use existing, shared facilities, or new, dedicated facilities:

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14 Case No. 8881, Direct Testimony of Steve Molnar on Behalf of Staff ("Molnar Direct"), at 18 (September 21, 2001). The Molnar Direct is attached to the July 15, 2002 Testimony of Bret L. Mingo on Behalf of Core Communications, Inc., as Exhibit B.

15 Transcript, at 685-86.

- "The slight difference we'll run into with CLECs and in the connections that we'll build from a Verizon central office to a CLEC central office, we will look at those individually to make the determination of if it's an efficient engineering, you know, decision, to build those connections over loop equipment or over interoffice facility equipment."[16]

- I mean, I can describe for you the different engineering factors that come into play to make that decision. And there are probably five or six of them. The ones that are the greatest impact and the most significance are the forecast of the total transport requirements that the CLEC is going to have as well as the cabling distances and the types of connections that will come off of the multiplexers.[17]

Mr. Albert's testimony is absolutely inconsistent with Verizon's actual interconnection policy.

First, in CoreTel's extensive experience, Verizon has maintained a steadfast policy of using only newly constructed, dedicated facilities for interconnection purposes. This policy is demonstrated by the fact that, on eight occasions between August 1999, and October 2002, Verizon flatly refused specific requests to interconnect with Core at a Core POP using existing, shared facilities.[18]

In responding to CoreTel interconnection requests, Verizon account managers and engineers have repeatedly put Verizon's Dedicated Entrance Facility Policy in clear and concise terms:

- On September 5, 2000, a Verizon account manager stated: "As you know "common muxes" in a building are not utilized for interconnection. If there is no third party provider or cages, we will have to wait until these entrances are complete before we can provide service."[19]

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16 *Id.*, at 686.

17 Transcript, at 692 (Tuesday, October 29, 2002).

18 Mingo Declaration, at 2.

19 *Id.* at 3 and Exhibit C.

- On November 9, 2001, the same Verizon account manager stated: "We do not use a common mux for wholesale services."[20]

- On May 23, 2002, a Verizon interconnection engineer stated: "[C]ommon mux cannot/will not be utilized."[21]

Further, Verizon could not possibly use "five or six" "different engineering factors" alluded to by Mr. Albert, because Verizon is so quick to reject CoreTel's requests for existing, shared facilities, that Verizon would not have enough time to engage in even the most simplistic analysis of the existing, shared facilities.[22] Verizon has refused such requests within as little as 34 minutes.[23] That amount of time is simply not sufficient for Verizon to consider "the forecast of the total transport requirements that the CLEC is going to have,"[24] or "the cabling distances and the types of connections that will come off of the multiplexers,"[25] never mind the other three or four factors Mr. Albert did not specify in his testimony.

Even more egregious, Mr. Albert's testimony contradicts statements made by Verizon's own witnesses in other proceedings:

- In an affidavit dated October 5, 2001, Verizon Account Manager Dianne McKernan stated: "Verizon uses only dedicated entrance facilities for the installation of interconnection trunks with carriers."[26]

- In testimony dated November 2, 2001, Verizon panel witnesses David J. Collins, John R. Gilbert and David Visser stated: "Verizon MD builds dedicated interoffice facilities (physical infrastructure) for carriers... for

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20 *Id.* at 3 and Exhibit E.

21 *Id.*, at 3 and Exhibit F.

22 *Id.*, at 3-4.

23 *Id.*, at 4-5.

24 Transcript, at 692.

25 *Id.*

26 Case No. 8881, Reply Panel Testimony of David J. Collins, John R. Gilbert and David Visser, Exhibit D, Affidavit of Dianne McKernan (Oct. 5, 2001).

purposes of interconnection trunking. This has been Verizon's practice since the 1984 divestiture from AT&T for all facilities-based carriers."[27]

The only logical conclusion of the foregoing is that Mr. Albert is simply not a credible witness. His testimony with regard to Verizon's entrance facility interconnection policies and practices should be disregarded in its entirety. In addition, his testimony on other subjects should be considered in light of the inaccuracies demonstrated herein.

iii. Verizon's recent offers to interconnect using existing, shared facilities only highlights the existence of a systemic problem

In an obvious reaction to the Commission's consideration of Verizon's Dedicated Entrance Facility Policy in the context of this case,[28] Verizon has very recently begun to consider using existing, shared facilities to interconnect with Core.

For two Core POPs where Verizon previously refused to use existing, shared facilities, Verizon is now offering to do precisely that. After rejecting Core's request to use existing, shared facilities to interconnect in Altoona, Pennsylvania on October 9, 2002, Verizon offered to use existing, shared facilities on October 23, 2002 – five days before the commencement of hearings in this case.[29] And, after rejecting Core's request to use existing, shared facilities to interconnect in Salisbury, Maryland on May 23, 2002, Verizon offered to use existing, shared facilities on November 1, 2002 – on the next to last day of hearings in this case.[30]

The intent of these last minute offers is clear. Verizon hopes to delude the Commission into believing that it does consider CLEC interconnection requests on an individualized basis.

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27 Case No. 8881, Surrebuttal Panel Testimony of David J. Collins, John R. Gilbert, and David Visser, pp. 17 (Nov. 2, 2001).

28 *See, e.g.,* Case No. 8921, Order No. 78088, at 3 (Oct. 24, 2002).

29 Mingo Declaration, at 5.

30 *Id.*

By saying "yes" twice, Verizon hopes to cast its entire history of interconnecting with CLECs in a new light. But, the timing of these offers is simply too convenient. After denying eight of eight requests to use existing, shared facilities, over a span of four years, Verizon has reversed itself and has "offered" to satisfy two such requests (each of which it previously rejected) in the span of one week. The Commission should consider the two last-minutes offers in light of their obvious intent – to win 271 approval without committing to policies and practices that will permit competition on an irreversible and lasting basis.[31]

B. Verizon's Dedicated Entrance Facility Policy Violates the Section 251(c)(2) "Technically Feasible" Standard

The FCC has clarified significantly the contours of section 251(c)(2)'s "technical feasibility" standard. First, the FCC has concluded that the term "technically feasible" refers "solely to technical or operational concerns, rather than economic, space or site considerations."[32] Moreover, the FCC has determined that the obligations imposed by section 251(c)(2) "include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection...."[33] Furthermore, section 251(c)(2) "bars consideration of costs in determining 'technically feasible' points of interconnection."[34] A BOC, such as Verizon, also "must accept the novel use of, and modification to, its network facilities to accommodate the interconnector...."[35] Finally, ILECs, such as Verizon, "have a duty to make available to

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31 *See, Id.*, at 6-7.

32 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 198 (1996) ("Local Competition Order") (subsequent history omitted).

33 *Id.*, at ¶ 198.

34 *Id.*, at ¶ 202.

35 *Id.*

requesting carriers general information indicating the location and technical characteristics of incumbent LEC network facilities."[36]

At bottom, section 251(c)(2)'s "technical feasibility" standard encompasses "more than what is merely 'practical' or similar to what is ordinarily done."[37]

Verizon's Dedicated Entrance Facility Policy violates its section 251(c)(2) duty to provide interconnection at any technically feasible point. Verizon admitted in its Reply Checklist Declaration that using existing, shared facilities for entrance facility interconnection is technically feasible.[38] Indeed, Verizon very recently has offered to interconnect with Core using existing, shared facilities in Altoona, Pennsylvania and Salisbury, Maryland.[39] Verizon's own statements and conduct, then, demonstrates that Verizon's Dedicated Entrance Facility Policy[40] violates the technically feasible standard. Verizon's incentive for refusing to provide interconnection at this clearly technically feasible point is obvious. Verizon's Dedicated Entrance Facility Policy forces CLECs "to make inefficient use of their own and incumbent LEC facilities, with anticompetitive effects."[41]

In defense of its policy, Verizon implies that dedicated facilities are necessary to address unspecified "reliability issues."[42] However, as CoreTel witness Douglas A. Dawson testified on

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36 *Id.*, at ¶ 205.

37 *Id.*, at ¶ 202.

38 Verizon Reply Checklist Declaration, ¶ 44. *See also* Molnar Direct, at 15 ("Verizon does not dispute that [the interconnection requested by Core] is technically feasible".).

39 *See, supra*, at 10.

40 *See, e.g.*, Molnar Direct, at 14 ("Verizon claims that it did not discriminate in its treatment of Core but, rather, followed its established requirement that entrance facilities can only be provided on a dedicated basis. If all carriers are treated alike, [according to Verizon,] there can be no claim of discrimination.")

41 Local Competition Order, at ¶ 205.

42 Reply Checklist Declaration, at ¶ 44.

cross examination, the difference in reliability between dedicated and shared fiber ring facilities is infinitesimal: "We're talking a difference of three [n]ines and four [n]ines and a few extra minutes a year of average down time. The loop facilities Verizon builds are very good facilities. Otherwise you'd have a whole flood of customer complaints."[43]

Moreover, Verizon's reliability concerns are based on a misinterpretation of a CLEC's motive in requesting the use of existing, shared facilities. CLECs request existing, shared facilities because such use permits timely and efficient market entry, not because CLECs specifically prefer shared versus dedicated facilities on a technical basis. In the case where Verizon does have legitimate capacity or reliability concerns, the logical solution would be to provide as much capacity as is reliably available to the CLEC over existing, shared facilities, and, in a parallel process, construct a new dedicated facility. Once the new facility is complete, Verizon could, at its option, migrate the initial interconnection trunks from the old shared facility to the new, dedicated one.

This "migration" procedure is clearly a technically feasible solution to Verizon's purported reliability concerns. Indeed, Mr. Albert outlined just such a procedure in written testimony in a proceeding in West Virginia on this very issue. According to Mr. Albert, such "migrat[ions]" are done "routinely," and "[p]erforming this work without service disruption is a basic and standard procedure."[44]

In sum, not only is interconnection with existing, shared facilities technically feasible, there is a routine solution to handle any resulting reliability differences that may (but probably

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43 Transcript, at 720.

44 *See, North County Communications Corporation v. Verizon West Virginia Inc.*, WV PSC Case No. 02-0254-T-C, Rebuttal Testimony of Donald E. Albert, at 24 (Oct. 4, 2002). The relevant excerpt is attached hereto as Attachment 2.

do not) exist between shared and dedicated facilities. Verizon's Dedicated Entrance Facility Policy therefore violates the technically feasible standard of section 251(c)(2) and checklist item one.

C. Verizon's Entrance Facility Interconnection Policy Violates the Section 251(c)(2) "Equal In Quality" Standard

The FCC has explained that "the equal in quality [interconnection standard of section 251(c)(2)(C) of the Act] requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, *or any other party.*"[45] Elaborating on this standard, the FCC went so far as to state in section 51.305(a)(5) of its interconnection regulations:

> An incumbent LEC shall provide ... interconnection with the incumbent LEC's network ... [o]n terms and conditions ... that are no less favorable than the terms and conditions upon which the incumbent LEC provides interconnection to itself. This includes, but is not limited to, *the time* within which the incumbent LEC provides such interconnection.[46]

Further explaining the rationale behind the FCC's equal in quality standard, Staff testified in another proceeding:

> I believe that a requesting carrier would perceive the equal [in quality] interconnection standard to include installation intervals that are equal to those Verizon provides to itself in serving retail customers. Anything less would mean that Verizon would have the ability to create an advantage for itself by serving its retail customers expeditiously while delaying the market entry of its potential competitors.[47]

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45 Local Competition Order, at ¶ 224 (emphasis added).

46 47 C.F.R. § 51.305(a)(5) (emphasis added).

47 Molnar Direct, at 17.

Verizon's Dedicated Entrance Facility Policy violates its section 251(c)(2) duty to provide equal in quality interconnection. As shown above, the equal in quality standard requires Verizon to provide interconnection to CLECs in the same interval as it would provide the same function to its own retail operations. The relevant retail interval comparison for Verizon's provision of interconnection entrance facility circuits is Verizon's tariffed interval for provision of special access circuits to its own end users.[48] Simply put, there is no technical distinction between the two services.[49] Assuming there is available capacity on existing, shared facilities, the entrance facility circuit and the special access circuit can and should be provisioned within the same interval. So, if a CLEC requested a DS3 entrance facility circuit for interconnection, Verizon should provision that circuit in the same 20 business day interval as it would provide a special access DS3 circuit to an end user.[50] Instead, Verizon's Dedicated Entrance Facility Policy results in an interval of no less than six months, and often, more than one year.[51]

Attempting to flout its "equal in quality" obligation, Verizon brazenly alleges that it has the "sole right and discretion" with respect to how it interconnects with Core.[52] This Verizon position, however, runs squarely against the section 251(c)(2)'s equal in quality standard, and is thus contrary to checklist item one. In another proceeding, Commission Staff found that "it is

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48 *Id.*, at 21.

49 Dawson Direct, at 11 ("There are no issues, from a technical standpoint, of CoreTel being considered a carrier... Essentially, a T1 is a T1 whether it is used for carrier grade service or customer grade service.").

50 Molnar Direct, at 21.

51 *See*, Molnar Direct, at 23; *and see*, Mingo Direct, at 5-6.

52 Reply Checklist Declaration, at ¶ 42. *Also see*, Transcript, at 701.

clear that the FCC requires provisioning intervals for interconnection that apply to CLECs to be the same as those which apply to the incumbent carrier, or Verizon."[53]

As demonstrated above, Verizon's Dedicated Entrance Facility Policy violates section 251(c)(2)'s equal in quality standard. In addition to technically feasible, this is a second independent basis to find that Verizon has failed to satisfy checklist item one.

D. Verizon's Entrance Facility Interconnection Policy Violates The Section 251(c)(2) "Nondiscrimination" Standard

The FCC has concluded that the term "nondiscriminatory" requires both a comparison of how Verizon treats third parties and how Verizon treats itself. As the FCC has found:

> Because the ILECs have an incentive to discriminate in favor of themselves, "...we reject for purposes of section 251, our historical interpretation of 'nondiscriminatory,' which we interpreted to mean a comparison between what the incumbent LEC provided other parties in a regulated monopoly environment. We believe that the term 'nondiscriminatory,' as used throughout section 251, applies to the terms and conditions an incumbent LECs imposes on third parties as well as itself. In any event, by providing interconnection to a competitor in a manner less efficient than an incumbent LEC provides itself, the incumbent LEC violates the duty to be 'just' and 'reasonable' under section 251(c)(2)(D)."[54]

Further elaborating on this standard in the section 271 context, the FCC has noted that incumbent LECs must "provide interconnection to [CLECs] in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operation."[55]

Verizon's Dedicated Entrance Facility Policy violates its section 251(c)(2) duty to provide nondiscriminatory interconnection. The policy is discriminatory because it denies CLECs access to Verizon's vast, functioning, and reliable existing network. In effect, Verizon's

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53 Molnar Direct, at 18.

54 Local Competition Order, at ¶ 218.

55 *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of New York,* Memorandum Opinion and Order, 15 FCC Rcd 75, ¶ 65 (1999) ("New York 271 Order").

policy reserves all existing network capacity for retail purposes. Interconnecting CLECs get access only to specific, separate, newly constructed, dedicated facilities. Verizon does not deny this. In its reply declaration, Verizon readily admits that it refuses to interconnect with Core over existing, shared facilities in order to reserve capacity for Verizon's own "future service requirements."[56] This is exactly the type of discrimination that violates section 251(c)(2) of the Act, and the requirements of checklist item one.

Verizon seeks to defend its discriminatory conduct by alleging that "Verizon MD cannot discriminate against carriers in the provision of interconnection trunk services in favor of its end user customers, since it does not provide interconnection trunking to end users in the first place."[57] However, Verizon's claim directly contradicts the plain language of the statute and the FCC's implementing rules.Verizon mistakenly believes that its nondiscrimination obligation only requires that Verizon treat CLECs equally, without regard to how Verizon treats itself.[58] This is pure nonsense, however.

As the FCC has noted in the section 271 context:

> [F]or those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its **own retail service offerings**, the BOC must provide access to competing carriers in "substantially the same time and manner" as it provides to itself. Thus, where a retail analogue exists, a BOC must provide access that is **equal to (i.e., substantially the same as) the level of access** that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness.[59]

And, as Commission Staff testified in another proceeding:

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56 Verizon Reply Checklist Declaration, at ¶ 43.

57 *Id.*

58 Verizon Reply Checklist Declaration, ¶ 42.

59 New York 271 Order, ¶ 65.

> Verizon is attempting to cloud the application of the Act and the FCC's rules by claiming that Verizon only interconnects with carriers and not retail customers. According to Verizon, there should be no comparison between the provision of interconnection to carriers and the provision of retail services to retail customers. Contrary to Verizon's contention, if it were not appropriate to make such a comparison, the plain language of the Act and the FCC's rules would have no meaning.[60]

Of course, Verizon would prefer that its nondiscrimination obligation had no meaning, but the law, the FCC's implementing rules, and section 271 require otherwise.

Therefore, in addition to Verizon's failure to meet the technically feasible and equal in quality standards, its failure to meet the nondiscriminatory interconnection standard is a third independent basis to find that Verizon has failed to satisfy checklist item one.

III. VERIZON'S POLICY TO REFUSE TO PASS ANI INFORMATION OVER LOCAL INTERCONNECTION TRUNKS VIOLATES SECTION 251(C)(2) AND THEREFORE CHECKLIST ITEM ONE – INTERCONNECTION

When a CLEC interconnects with Verizon using multi-frequency ("MF") signaling, Verizon refuses to pass automatic number identification ("ANI") to the CLEC's switch.[61] ANI information essentially lets the CLEC's switch know from which Verizon phone number an incoming call is being placed – a wholesale analogue of "Caller ID."[62] ANI information is critical to a CLEC's ability to offer a range of next-generation services that can recognize the calling parties number, make routing and feature set decisions accordingly.[63]

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60 Case No. 8881, Rebuttal Testimony of Steve Molnar on behalf of Staff ("Molnar Rebuttal"), at 9 (Oct 19, 2001). The Molnar Rebuttal is attached to the July 15, 2002 Testimony of Bret L. Mingo on Behalf of Core Communications, Inc., as Exhibit C.

61 Dawson Direct, at 24; Transcript at 716 ("MR. DAWSON: I have one clarification. On pages 24 and 25 apparently yesterday there was some confusion on the issue CPN and ANI. On those two pages I used the term CPN several times. I'd like to point out in every case I used that I also could substitute, ANI.").

62 *Id.*

63 *Id.*

Verizon's policy violates the equal in quality and nondiscriminatory interconnection standards of section 251(c)(2). Verizon passes ANI information to:

- IXCs, which generally use MF signaling to interconnect with Verizon;[64]
- CLECs that use signaling system seven ("SS7") to interconnect with Verizon;[65] and
- CLECs that use MF signaling, but only CLECs that interconnect with Verizon for long distance as well as local traffic.[66]

Because CoreTel is not an IXC, does not use SS7 signaling, and is not a CLEC that exchanges long distance as well as local traffic, Verizon will not pass ANI information. Because there is no regulatory requirement for CoreTel to do any of the above, Verizon's policy is clearly arbitrary. More important, Verizon's policy clearly violates the equal in quality and nondiscriminatory interconnection standards because Verizon provides a type of interconnection (i.e., MF signaling with the ANI feature enabled) to some interconnecting carriers (the types bulleted above) but not to others.

Verizon's response is nonsensical and misleading. In the Reply Checklist Declaration, Verizon "explains" that: "Verizon MD's switching machines can not translate and connect 10-digit local calls, originated from the dial tone lines they serve, to interexchange carrier Feature Group D trunk groups."[67] Verizon is simply stating a truisim: unless the caller dials 11 digits (i.e, inserts a "1" in front of the ten digit phone number), the call will be routed locally. However, no one, least of all CoreTel, is asking Verizon to deliver local calls to IXCs. Rather,

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64 Reply Checklist Declaration at 19.

65 Letter from Verizon to CoreTel at 1(Sept. 13, 2002). This letter is attached hereto as Attachment C.

66 *Id.*

67 Reply Checklist Declaration at 19.

the "ask" is that Verizon enable a feature set (ANI) on trunk groups that deliver local traffic to CLECs, just as Verizon enables that feature on trunks groups to IXCs, long distance CLECs, and SS7 CLECs.

IV. VERIZON'S REFUSAL TO PROVIDE INFORMATION REGARDING DARK FIBER LOCATION AND AVAILABILITY VIOLATES CHECKLIST ITEMS FOUR (LOOPS) AND FIVE (TRANSPORT)

Verizon's duty to provide dark fiber unbundled network elements ("UNEs") stems from the unbundling requirement of Section 251(c)(3) of the Act,[68] from Section 271(c)(2)(B)(iv) and (v) of the Act,[69] and from the FCC's 1999 UNE Remand Order, in which Verizon was ordered to make dark fiber available as both a loop and a transport UNE.[70] The FCC has clarified that "In order to establish that it is providing unbundled local loops in compliance with checklist item 4, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality."[71]

Verizon has failed to demonstrate that it has committed to a concrete and specific legal obligation to provide dark fiber UNEs in quantities that competitors demand and at an acceptable level of quality. The overriding problem with Verizon's current dark fiber "offering" is that it precludes CLECs from effectively identifying specific dark fiber loop and transport segments that may be available as UNEs. As Core witness Douglas Dawson testified:

> [t]he current rules don't really let a CLEC understand what dark fiber is available. I certainly equate that to a game of Battleship, we have to guess is there fiber

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68 47 U.S.C. § 251(c)(3); 47 C.F.R. §§ 51.319(a)(1) & (d)(1)(ii).

69 47 U.S.C. § 271(c)(2)(B)(iv) and (v).

70 15 FCC Rcd at 3776, 3843-46, ¶¶ 174, 325-330 ("UNE Remand Order")

71 Virginia 271 Order, at C-26.

> around A to B, make my request, get it accepted or rejected. If that doesn't work, come back to B, come back to C,come back to D. So it's very, very difficult for a CLEC to understand the Verizon network. Again,there's other ways that it could be done.[72]

Without some comprehensive view of Verizon's fiber network - such as the one Verizon undoubtedly uses for its own network planning purposes - CLECs are as a practical matter prevented from accessing dark fiber UNEs.

Although Verizon's updated model interconnection agreement – which Verizon provided to the Commission and other parties for the first time during the hearings in this case – provides for CLEC access to wire center maps,[73] and route-specific field surveys,[74] both forms of information are larded down with numerous caveats and restrictions. To gain access to wire center maps, for instance, CLECs must first "negotiate"[75] an interval, obtain a cost estimate, then wait as Verizon prepares up to the minute maps on a time and materials basis. This is far from the type of seamless access to existing Verizon records which CLECs would need to compete effectively. It is also a clear violation of the FCC's mandate that Verizon "provide to competitors the same detailed underlying information regarding the composition and qualifications of the [dark fiber] loop that the incumbent itself possesses,"[76]

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72 Transcript, at 724.

73 Verizon Model Interconnection Agreement ("Model ICA") at p.112, §8.2.19.1.

74 *Id.* at p.112, §8.2.19.2.

75 Verizon Model Interconnection Agreement ("Model ICA") at p.112, §8.2.19.1. The Model ICA is on the record as Verizon Exhibit 17.

76 *In the Matters of WorldCom, Inc., Cox Virginia Telecom, Inc., and AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.*, at 234, ¶ 473 ("Virginia Arbitration Order").

In any case, nothing in the record demonstrates that the dark fiber provisions of the Model ICA have been successfully adopted by any CLEC in Maryland. Nor is it clear that a CLEC wanting to update its interconnection agreement solely for access to dark fiber would be able to "pick and choose" dark fiber provisions out of the Model ICA. In CoreTel's own experience, Verizon's dark fiber amendment template is vastly different from the dark fiber provisions of the Model ICA.

Finally, the integrity of Verizon's entire dark fiber offering in Maryland is marred by the apparent existence of an unfiled dark fiber amendment with a single CLEC. According to Verizon, it entered into an agreement with "Cavalier" by which Verizon would provide Cavalier with parallel provisioning of collocation and dark fiber UNEs.[77] Amazingly, it appears Verizon does not believe it has a duty to make its dark fiber agreement with Cavalier available to other CLECs. The following colloquy fully demonstrates Verizon's arrogance:

> Q. It's paragraph 136, notes that Verizon entered into agreements with Cavalier for the, quote, parallel provisioning, close quote, of collocation arrangements in unbundled interoffice dark fiber in Maryland as well as a couple of other jurisdictions. In Maryland, do you know when Verizon entered that agreement with Cavalier?
>
> A. MS. SHOCKET: I'm not exactly sure about the date, but I know we have provisioned approximately 170 orders with Cavalier in the second and third quarter of this year using the parallel provisioning process.
>
> Q. So it would be, I guess, sometime prior to the second quarter of this year?
>
> A. MR. ALBERT: I think the first orders 00787 for that trial showed up in May. So we actually got the first whack of orders from Cavalier, some in Maryland, some in D.C., some in Virginia, in May of this year.

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77 Reply Checklist Declaration at 57 ("[B]ased upon Cavalier's stated need, Verizon has entered into trial agreements with Cavalier for the parallel provisioning of collocation arrangements and unbundled interoffice facility dark fiber in Maryland.").

Q. And that amendment was entered into between Verizon and Cavalier sometime prior to May?

A. MR. ALBERT: We may have even started before the amendment was final and officially signed. There was a need to get going on it and we got going.

Q. Right. And has that amendment or that trial agreement been filed with the Commission?

A. MR. ALBERT: I don't know. I think you're right that officially it was called a trial agreement. I am not sure of the particulars of that document, you know, if it was an addendum to the interconnection agreement or if it was its own stand-alone thing or not. So –

Q. Was that trial agreement filed with the Commission?

A. MR. ALBERT: I don't know.[78]

To summarize, beginning May 2002, Verizon has provided approximately 170 dark fiber orders pursuant to an unfiled parallel provisioning arrangement with Cavalier – an arrangement which Verizon apparently has no intention of filing with the Commission.[79] Clearly, checklist compliance cannot be demonstrated – and indeed is severely compromised – by the existence of secret agreements.

V. THE PUBLIC INTEREST DICTATES AGAINST APPROVAL OF VERIZON'S 271 APPLICATION AT THE PRESENT TIME

In reviewing Verizon's compliance with section 271(c), the Commission must consider the public interest in a vibrant, competitive market for local telecommunications services.[80]

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78 Transcript at 786-87.

79 *See*, Verizon Response to In-Hearing Data Request October 29, 2002 No. 7 ("It is Verizon's understanding that neither Verizon nor Cavalier filed the Parallel Provisioning Trial Agreement with the Maryland PSC.").

80 Commission Letter Order Denying Verizon Motion to Strike, at 4 (October 7, 2002). ("At the conclusion of this proceeding, the Commission will issue a report to the FCC, rather than a rulemaking or a policy-setting order. Nonetheless, an examination of the public

Although there is no single test to determine whether the public interest is met, the existence of viable competition is widely recognized as a vital factor. As Office of People's Counsel has succinctly stated:

> [I]t should be without dispute that pursuant to the Commission's own statute, the Commission is required to ensure that the operation of a public service company is "in the interest of the public." The state of actual competition in Maryland, the current status of the CLECs, and the impact on consumers and competition if Verizon is granted entry into the interLATA long-distance business given the lack of competition currently existing in Maryland should be of paramount importance to this Commission. Contrary to Verizon's argument, mere compliance with the Section 271 checklist does not and should not equal compliance with the public interest test.[81]

Verizon's use of various figures to demonstrate the extent of competition in Maryland has been debated by many parties. CoreTel takes specific exception to Verizon's assertion that the volume of minutes of use ("MOUs") exchanged between Verizon and CLECs is indicative of viable, lasting competition. The truth is that the vast majority of the MOUs reported by Verizon are the result of CLECs' relative success in a single niche market - provision of inbound dial up capacity to Internet service providers ("ISPs").

CLECs' relative success with ISP dial up service is demonstrated as follows:

- In the ISP Remand Order,[82] which Verizon has made a concerted effort to implement in Maryland, the FCC set forth a 3:1 ratio of terminating to originating MOUs to identify ISP-bound traffic;[83]

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interest is consistent with the Commission's mandate to oversee the development of competition in the telecommunications service market (PUC §8-501) as well as with the Commission's general supervisory and regulatory responsibilities (PUC §2-113). Throughout the proceeding, the parties will have opportunities to present evidence in support of their positions and to counter the positions of other parties. Testimony in support of, or against the validity of using E911 data to demonstrate the status of competition, for example, can be presented. The Commission will weigh the evidence presented as part of its analysis as it prepares its report to the FCC.").

81 Office of People's Counsel Response to Verizon Motion to Strike, at 5 (Aug. 27, 2002).

82 *Order On Remand And Report And Order In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 and *In re*

- Traffic delivered by a Verizon to a CLEC that falls within the 3:1 ratio is considered voice traffic;[84]

- Traffic delivered by Verizon to a CLEC that exceeds the 3:1 ratio is considered ISP-bound traffic;[85]

- The most up-to-date figures provided by Verizon indicate that Verizon delivered 1,785,651,793 MOUs to CLECs versus 64,790,502 MOUs delivered by CLECs to Verizon, in August, 2002,[86] for a total of 1,850,442,295 MOUs exchanged in both directions;

- Of the traffic delivered by Verizon to CLECs, 194,371,506 MOUs fall within the 3:1 ratio, and can be considered voice,[87] while the remaining 1,591,280,287 MOUs exceed the 3:1 ratio and can be considered ISP-bound;[88]

- Thus, approximately 86% of the total MOUs exchanged between Verizon and CLECs in Maryland in August were delivered to CLECs' ISP customers.[89]

While ISPs are an important niche market, the relative success of CLECs in serving that one niche cannot support the proposition that the market for local telecommunications services, on the whole, is open to competition. Rather, the success of CLECs in serving ISPs would

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Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, 16 FCC Rcd. 9151, ¶ 79 (2001).

83 *Id.*

84 *Id.*

85 *Id.*

86 Verizon Response to In-Hearing Data Request October 29, 2002 No. 5.

87 That is, 194,371,506 is the product of the number of MOUs delivered by CLECs to Verizon, multiplied by three.

88 That is, 1,591,280,287 is the total number of MOUs delivered by Verizon to CLECs, less those that fall within the 3:1 ratio.

89 This is the result of dividing the total number of MOUs that exceed the 3:1 ratio (1,591,280,287) by the total number of MOUs exchanged in either direction (1,850,442,295).

appear to be a glaring aberration in Verizon's otherwise sterling record of stifling competition.[90] At least with respect to facilities-based competition, ISP-bound traffic is the only form of traffic of which CLECs have a significant share. In a truly open, competitive market, one would of course expect voice traffic to predominate in proportion to ISP-bound traffic -- not the other way around.

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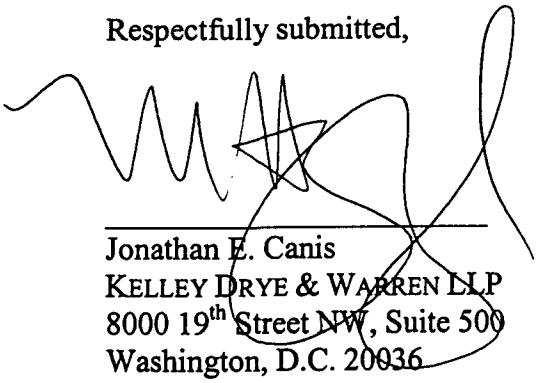
90 At hearing Verizon was asked to produce a breakdown of MOUs exchanged between Verizon and CLEC UNE-P lines. Verizon essentially declined to answer and declined to respond to repeated requests for clarification by CoreTel's counsel. See, Verizon Response to In-Hearing Data Request October 29, 2002 No. 5. The natural conclusion is that Verizon does not exchange any meaningful volume of MOUs with UNE-P CLECs.

VI. CONCLUSION

Consistent with the foregoing, the Commission should recommend to the FCC that Verizon's 271 application be denied because Verizon has failed to meet checklist standards with respect to interconnection, loops, and transport. In addition the Commission should find that the public interest dictates that Verizon's application be denied at this time, because the vigorous and lasting competition envisioned in the Act has not come to pass in Maryland.

Respectfully submitted,



Christopher F. Van de Verg
CORE COMMUNICATIONS, INC.
209 West Street, Suite 302
Annapolis, MD 21401
(410) 216-9865

Jonathan E. Canis
KELLEY DRYE & WARREN LLP
8000 19th Street NW, Suite 500
Washington, D.C. 20036
(202) 955-9600

Michael B. Hazzard
KELLEY DRYE & WARREN LLP
8000 Towers Crescent Drive, Suite 1200
Vienna, VA 22182
(703) 918-2300

COUNSEL FOR CORE COMMUNICATIONS, INC.

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